

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 August 2024

DOCKET NUMBER: AR20240000629

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

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

- DD Form 149 (Application for Correction of Military Record)
- Self-Authored Statement
- Character Letters (two)
- Screenshots (two)

FACTS:

1. The applicant did not file within the 3-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 is not arguing the original discharge. He asks the Army to consider his many years of dedication to his family and friends, his service to his community and years of living as a productive and valued member of society and to consider upgrading his discharge status. He has lived with the UOTHC discharge for over 45 years. Since leaving the Army he has lived a clean, productive, and active life becoming a valued member of his Eagles club; a person given to charity and service and always trying to help others. He hopes these actions over so much time are enough to get a second consideration of his discharge.

b. He joined at age 19 and was told by his father that he was worthless. On 18 August 1979, two Army officers were killed on the Demilitarized Zone in Korea. They were put on alert and the anxiety/stress level was high. He turned to drinking to calm his nerves and to try to stop the nightmares. The more he drank the worse it got, he went absent without leave (AWOL) and later turned himself in. He had anger issues and

drinking contributed to his divorce. His son was diagnosed as autistic (full statement available for review).

3. The applicant enlisted in the Regular Army on 31 May 1975 for three years. His military occupational specialty was 11B (Infantryman).

4. The applicant served in the Republic of Korea from 22 October 1975 through 21 November 1976.

5. The applicant was reported as AWOL on 2 May 1977, he was subsequently dropped from the rolls.

6. The Commander's Report of Inquiry/AWOL shows the applicant expressed an inability to adjust to military life shortly prior to departing AWOL-Emotionally unstable.

7. Court martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with AWOL on or about 2 May 1977 and did remain absent.

8. The applicant surrendered to military authorities on 4 December 1977.

9. An updated charge sheet shows court martial charges were preferred against the applicant for violations of the UCMJ. His DD Form 458 shows he was charged with AWOL from on or about 2 May 1977 until on or about 4 December 1977.

10. The applicant consulted with legal counsel on 13 December 1977 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 UOTHC discharge; the procedures and rights that were available to him.

a. After consulting with legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, for the good of the service-in lieu of trial by court-martial. 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 and he may expect to encounter substantial prejudice in civilian life because of an UOTHC discharge.

b. He elected to submit statements in his own behalf; however, a statement is not available for review.

11. The applicant's immediate commander recommended approval of his request for discharge with a UOTHC Discharge Certificate. The commander noted the applicant's pattern of behavior indicates that retention is neither practical nor desirable. He went AWOL due to non-response of his unit to his discharge request. If he is returned to duty, he will go AWOL again.

12. The applicant's chain of command recommended approval, with a discharge UOTHC.

13. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 13 December 1977. He directed the applicant's immediate reduction to the lowest enlisted grade and a discharge certificate UOTHC.

14. A Statement of Medical Condition, dated 15 December 1977 shows the applicant underwent a separation examination on 6 December 1977 and there had been no change in his medical condition.

15. The applicant was discharged on 3 January 1978. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of AR 635-200, Chapter 10, with Separation Program Designator Code JFS and Reenlistment Code 4. His service was characterized as UOTHC. He completed 1 year, 11 months, and 27 days of net active service. He had 216 days of lost time from 2 May 1977 through 3 December 1977.

16. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

17. The applicant provides:

a. A character reference letter from [REDACTED] (spouse) shows the applicant seemed to drink away his problems, which she now knows was post-traumatic stress disorder (PTSD). He got a job and enjoyed the work. He turned his life around and quit drinking and devoted himself to his family. The applicant worked hard to help their autistic son, who graduated and went on to college. The applicant is in the Fraternal Order of Eagles, doing charity fundraising. They will celebrate their 38th anniversary, he has improved his life as well as the lives of those in his life.

b. A character letter from [REDACTED] that attests to the applicant's politeness and being a supportive friend.\

c. Screen shots that show names, member numbers, and titles.

18. On 22 June 1982, the Army Discharge Review Board (ADRB) determined the applicant was properly discharged and denied his request for a change in the type and nature of his discharge.

19. On 17 December 1991, the ADRB determined the applicant was properly and equitably discharged and denied his request.

20. On 20 March 2024, an agency staff member requested the applicant provide medical documents that support his issue of mental health issues (anxiety and stress). As of 23 April 2024, no response has been provided.

21. In reaching its determination, the Board can consider the applicant's petition and service record in accordance with the published equity, injustice, or clemency determination guidance.

22. 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 31 May 1975.
- The applicant served in the Republic of Korea from 22 October 1975 through 21 November 1976.
- The applicant was reported as AWOL on 2 May 1977, he was subsequently dropped from the rolls.
- The Commander's Report of Inquiry/AWOL shows the applicant expressed an inability to adjust to military life shortly prior to departing AWOL - Emotionally unstable.
- Court martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with AWOL on or about 2 May 1977 and did remain absent.
- The applicant surrendered to military authorities on 4 December 1977.
- An updated charge sheet shows court martial charges were preferred against the applicant for violations of the UCMJ. His DD Form 458 shows he was charged with AWOL from on or about 2 May 1977 until on or about 4 December 1977.
- After consulting with legal counsel, on 13 December 1977, the applicant voluntarily requested discharge under the provisions of Army Regulation (AR) 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, for the good of the service-in lieu of trial by court-martial.

- The applicant was discharged on 3 January 1978. His DD Form 214 (Report of Separation from Active Duty) shows he was discharged under the provisions of AR 635-200, Chapter 10, with Separation Program Designator Code JFS and Reenlistment Code 4. His service was characterized as UOTHC. He completed 1 year, 11 months, and 27 days of net active service. He had 216 days of lost time from 2 May 1977 through 3 December 1977.

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, "he is not arguing the original discharge. He asks the Army to consider his many years of dedication to his family and friends, his service to his community and years of living as a productive and valued member of society and to consider upgrading his discharge status. He has lived with the UOTHC discharge for over 45 years. Since leaving the Army he has lived a clean, productive, and active life becoming a valued member of his Eagles club; a person given to charity and service and always trying to help others. He hopes these actions over so much time are enough to get a second consideration of his discharge. He joined at age 19 and was told by his father that he was worthless. On 18 August 1979, two Army officers were killed on the Demilitarized Zone in Korea. They were put on alert and the anxiety/stress level was high. He turned to drinking to calm his nerves and to try to stop the nightmares. The more he drank the worse it got, he went absent without leave (AWOL) and later turned himself in."

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant provided hardcopy documentation including a Commander's Report of Inquiry/AWOL showing the applicant expressed an inability to adjust to military life and was labeled as emotionally unstable prior to going AWOL. In addition, on 6 December 1977, the applicant participated in a medical examination for the purpose of separation and endorsed symptoms of depression, anxiety, nervousness, shortness of breath, and heart palpitations.

e. 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.

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

g. 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's discharge paperwork indicates he was considered emotionally unstable, per the commander's report, and he endorsed symptoms consistent with anxiety on his separation physical.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged for one specification of being AWOL. Documentation from his discharge indicates he appeared emotionally unstable prior to going AWOL and, at the time of separation, endorsed symptoms consistent with anxiety. Given the nexus between anxiety and avoidance, his misconduct of AWOL would be mitigated by his BH condition at the time.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the two years of service, including a Vietnam deployment, prior to any misconduct and the findings of mitigation for the misconduct leading to the applicant's separation found in the medical review, the Board concluded there was sufficient evidence of an error or injustice warranting the change in the applicant's characterization of service to reflect Honorable.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	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 reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Honorable
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

2/13/2025

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, USC, 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, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. AR 635-200 sets forth the basic authority for the separation of enlisted personnel.
  - 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 Soldiers 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.

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 Service Discharge Review Boards (DRB) and Service 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 (PTSD); traumatic brain injury; sexual assault; or sexual harassment. Boards are 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.

5. The Under Secretary of Defense (Personnel and Readiness) issued guidance to DRBs and BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//