

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 September 2024

DOCKET NUMBER: AR20240000942

APPLICANT REQUESTS:

- reconsideration of his previous request(s) to upgrade his under other than honorable conditions discharge
- 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, Armed Forces of the United States Report of Transfer or Discharge (April 1971 to September 1972)
- Medical Record - Physical Profile, laceration to the hand, 20 September 1971

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Dockets Number:

- AR20090014277 on 17 February 2010
- AR20130011079 on 27 February 2014
- AR20220010912 on 26 May 2023

2. The applicant states while he understands the Board's decision to deny relief, he disagrees with it. He had family issues that he was dealing with. There was a great disparity on race relations that affected him and his ability to deal with both family, military and racial issues he was facing at the time, and he now requests a conference to provide more detailed information on this and ask for reconsideration for his Veterans Affairs benefits. The applicant marked "Other Mental Health" on his application.

3. The applicant enlisted in the Regular Army for 2 years on 30 April 1971. He was assigned to Fort Ord, CA for training. He completed basic combat training but did not complete military occupational specialty (MOS) training.

b. On 3 August 1971, while in basic training at Fort Ord, the applicant submitted a request to be reclassified into a Non-Combat MOS other than that of medic. He volunteered in any other non-combat MOS. His company commander recommended approval to train the applicant in MOS 11B, Infantryman.

c. On 10 September 1971, Headquarters, Department of the Army, approved the applicant's Application for Conscientious Objector noncombatant status request to be reclassified into a non-combat MOS.

d. While at Fort Sam Houston, the applicant was frequently counseled by members of his chain of command for various infractions including poor personal grooming, disrespect toward his instructors, failure to attend classes, missing formations, and five periods of being absent without leave (AWOL).

e. Also, while at Fort Sam Houston, he accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) on/for:

- 17 December 1971, disobeying lawful orders, on or about 15 December 1971; his punishment included forfeiture of \$50.00 pay and reduction to private/E-2.
- 17 March 1972, failing to go at the time prescribed to his appointed place of duty, on or about 28 February 1972 and 2 March 1972; and going absent AWOL from 9 to 13 March 1972; his punishment included reduction to E-1
- 11 April 1972, going AWOL from 3 to 4 April 1972; his punishment included forfeiture of \$50.00, and 10 days restriction and extra duty.

f. On 3 May 1972, the applicant was convicted by a summary court-martial of one specification each of failing to repair and being absent without leave from 24 to 26 April 1972. The convening authority approved the sentence to confinement and a forfeiture of pay on 10 May 1972.

g. On 21 June 1972, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

h. On 28 June 1972, the applicant's commander notified him of his intent to initiate separation actions against him under the provisions of Army Regulation (AR) 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), by reason of unfitness for military service.

i. On 30 June 1972, the applicant consulted with legal counsel and acknowledged he had been advised of the basis for the contemplated separation action. Following his consultation, he requested the right to personally appear before, and to have his case considered by a board of officers. He declined to submit a statement in his own behalf

and waived his right to further representation by military counsel. He acknowledged he could expect to encounter substantial prejudice in civilian life if given an undesirable discharge.

j. On 5 July 1972, the applicant's commander formally recommended the applicant's discharge, under the provisions of AR 635-212, by reason of unfitness. As the specific reasons, the commander stated that the applicant had demonstrated through his record of chronic AWOL and numerous acts of misbehavior that he was unwilling to be a satisfactory Soldier despite efforts of rehabilitation. The applicant's performance was characterized by intentional shirking of his duties and by behavior rendering him repeatedly subject to punitive action. There appeared to be no grounds for other disposition of the applicant. The commander added:

- elimination for unsuitability is not considered appropriate
- the applicant's performance is characterized by intentional shirking of his duties and by behavior rendering him repeatedly subject to punitive action
- his behavior is not due to an incapacity to become a satisfactory soldier within the meaning of unsuitability
- there appear to be no grounds for other disposition of this soldier.

k. On 27 July 1972, the applicant accepted NJP under Article 15 for going AWOL from on or about 14 July 1972 until on or about 26 July 1972. His punishment included forfeiture of \$100.00 per month for two months, and 45 days restriction and extra duty.

l. On 9 August 1972, a board of officers convened to determine if the applicant should be eliminated from service.

(1) In his testimony to the board of officers, the applicant stated he elected to appear before the board because he thought he could get a better discharge. He signed up as a 1-A-0; however, he didn't know they were going to put him in medical training. He never thought about asking anyone. The first sergeant, who was white, counseled him, but couldn't reach him. He tried to explain his problems to the first sergeant, but he didn't want to hear them. The first sergeant was always busy and stated that he didn't have time. He asked his company commander for a week or a couple of days of leave, and he wouldn't let him go.

(2) The board recorder stated there were thirteen counseling sessions by five different individuals, both NCOs (noncommissioned officers) and officers. The sessions covered the applicant's attitude, disobedience to NCOs and training leaders and his AWOLs. Testimony from two different company commanders, one white and one black, stated that the applicant was extremely uncooperative, and they couldn't seem to get through to him and couldn't figure out what the applicant's problem was, and that the

applicant did not respect authority. They also stated the applicant was inclined to rebel and that would make it extremely difficult for him to make an acceptable Soldier.

m. The board of officers found the applicant undesirable for further retention in the military because of habits and traits manifested by repeated commission of petty offenses. The board of officers determined his rehabilitating was not deemed possible and recommended that he be discharged due to unfitness, with the issuance of an DD Form 258A (Undesirable Discharge Certificate).

n. On 8 September 1972, the applicant again accepted NJP under Article 15 for failing to go at the time prescribed to his appointed place of duty, on or about 30 August 1972 and 28 August 1972; and for going from his appointed place of duty on or about 25 August 1972. His punishment included forfeiture of \$65.00 for one month.

o. The separation authority's approval is not available for review. However, consistent with the board's findings and recommendation the applicant was discharged on 25 September 1972. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of AR 635-212, with his service characterized under other than honorable conditions. He was assigned Separation Program Number 28B (unfitness) and Reenlistment Code 3. He completed 1 year, 3 months, and 8 days of net active service, with a cumulative total of 48 days of lost time.

4. On 13 November 1973, the Army Discharge Review Board (ADRB) reviewed his discharge and found it proper and equitable. The ADRB denied his request to change the narrative reason for his discharge.

5. On 17 February 2010, the Board considered his request for an upgrade of his discharge and denied it. The Board stated:

a. The applicant states he was "railroaded into signing a Chapter 10 discharge." He didn't understand what he was signing at the time and after 37 years it should be changed." The applicant was not discharged under AR 635-200, Chapter 10 but rather under AR 635-212. He did not have court-martial charges pending and as such he would not qualify for consideration under Chapter 10.

b. The applicant was afforded the opportunity to submit statements in his own behalf which he did at the board of officers hearing. The record does not contain, and the applicant has not provided any evidence that his discharge was coerced, or he was "railroaded" into accepting this type of discharge.

c. In the absence of evidence to the contrary, it is presumed that the discharge proceedings were conducted in accordance with law and regulations applicable at the

time. The character of the discharge is commensurate with his overall record. In order to justify correction of a military record the applicant must show to the satisfaction of the Board, or it must otherwise satisfactorily appear, that the record is in error or unjust. The applicant has failed to submit evidence that would satisfy this requirement.

16. The applicant petitioned the ABCMR requesting upgrade of his UOTHC discharge.

6. On 27 February 2014, the Board reconsidered his request for an upgrade of his discharge and change to his narrative reason for separation. The Board stated:

a. The applicant's record of chronic AWOL and numerous acts of misbehavior shows that he was unwilling to be a satisfactory Soldier. The applicant acknowledged the proposed separation action under the provisions of AR 635-212 and elected to appear before a board of officers. The board recommended he be discharged for unfitness with an undesirable discharge. He was discharged accordingly in September 1971.

b. At his hearing before the board of officers, the applicant stated he elected to appear because he thought he could receive a better discharge. His first sergeant, who was white, counseled him, but couldn't reach him. He tried to explain his problems to the first sergeant, but he didn't want to hear them. The applicant did not mention his discharge was a result of racial tensions at the time. Testimony from two different company commanders, one white and one black, stated that the applicant was extremely uncooperative, and they couldn't seem to get through to him and couldn't figure out what the applicant's problem was, and that the applicant did not respect authority.

c. He provided no evidence or a convincing argument for a change to his character of service and the reason and authority and his military records contain no evidence which would entitle him to a general or fully honorable discharge. Without evidence to the contrary, it appears his administrative separation was accomplished in compliance with applicable regulations with no procedural errors which would tend to jeopardize his rights. He was properly discharged in accordance with pertinent regulations with due process. Therefore, there is no basis for granting the applicant the requested relief. It is noted, the Board does not grant relief solely for the purpose of an applicant qualifying for medical or other benefits administered by the VA.

7. On 26 May 2023, the Board reconsidered his request a second time. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published DoD guidance for consideration of discharge upgrade requests. The Board considered the applicant's record of service, the frequency and nature of his misconduct, the reason for his separation and whether to apply clemency. The Board noted the applicant failed to provide a statement or

supporting documentation. The Board found insufficient evidence of in-service mitigating factors for the misconduct and the applicant provided no evidence of post-service achievements or letters of support to weigh a clemency determination. Based upon a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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

9. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting a reconsideration of his previous request(s) to upgrade his under other than honorable conditions discharge. On his DD Form 149, the applicant indicated Other Mental Health Issues is related to his request. More specifically, the applicant noted that he was having family issues and racial issues. The applicant's previous petitions to the ABCMR are summarized in the following: AR20090014277 on 17 February 2010, AR20130011079 on 27 February 2014, and AR20220010912 on 26 May 2023. 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 on 30 April 1971. He completed basic combat training but did not complete military occupational specialty (MOS) training, 2) on 03 August 1971, the applicant requested to be reclassified into a non-combat MOS other than that of medic and his company commander recommended approval to train the applicant in the MOS of 11B (Infantryman), 3) on 10 September 1971 the applicant's Conscientious Objector noncombatant status request to be reclassified into a non-combat MOS was approved, 4) the applicant received frequent counseling while at Ft. Sam Houston for poor personal grooming, disrespect towards his instructors, failure to attend classes, missing formations, and five periods of being absent without leave (AWOL), 5) the applicant received three Article 15's between 17 December 1971 and 11 April 1972 for disobeying lawful orders, failing to go at the prescribed time to his appointed place of duty, and going AWOL, 6) on 03 May 1972, the applicant was convicted by a summary court-martial of one specification each of failing to repair and being AWOL from 24 to 26 April 1972, 7) on 20 June 1972, the applicant underwent a mental status evaluation and was psychiatrically cleared to participate in any administrative action deemed appropriate by the command, 8) the applicant's commander recommended separation on 05 July 1972 under the provisions of Army Regulation (AR) 635-212, by reason of unfitness noting that the applicant demonstrated chronic AWOL and numerous acts of misbehavior and that he was unwilling to be a satisfactory Soldier despite efforts of rehabilitation. Moreover, that his performance was characterized by shirking of his duties and by behavior rendering him repeatedly subject to punitive action, 9) the applicant received an Article 15 on 27 July 1972 for going AWOL, 10) testimony from the board showed

the applicant was counseled on thirteen occasions by five different individuals, both NCOs and officers due to attitude, disobedience, and AWOL, 11) on 08 September 1972, the applicant received an Article 15 for failing to go at the prescribed time to his appointed place of duty, 12) the applicant was discharged on 25 September 1972 under the provisions of AR 635-212, with his service characterized under other than honorable conditions. He was assigned a Separation Program Number 28B (unfitness) and Reenlistment Code of '3.' He completed 1 year, 3 months, and 8 days of net active service with a cumulative total of 48 days of lost time. 13) the applicant's previous petitions to the Board were denied as his discharge was determined to be fair and equitable.

b. The Army Review Board Agency (ARBA) Medical 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. An in-service general surgery note for a laceration to his left hand dated 20 September 1971 showed his PULHES code for psychiatric as '1,' indicating he was not on a BH profile. A memorandum dated 09 August 1971 documented that the applicant was referred for a psychiatric evaluation in conjunction with his application for 1-A-0 status (conscientious objector). The psychiatrist documented that the applicant did not show signs of a psychiatric disease that would warrant disposition through other than administrative channels. A psychiatry memorandum dated 21 June 1972 documented that the applicant was evaluated on 20 June 1972 for the purposes of determining mental competency. The provider documented that the applicant did not meet criteria for a psychiatric disorder, that he was able to distinguish between right and wrong and adhere to the right, and that he had the mental capacity to understand and participate in any action taken in his case. Furthermore, it was noted that the applicant did not have a BH condition that would warrant disposition through medical channels and was psychiatrically cleared for any administrative action deemed appropriate by command.

d. Review of the applicant's service record shows his request for assignment in a non-combat MOS other than medic dated 03 August 1971. It was documented that the applicant was requesting to be reclassified to another non-combat MOS other than that of medic, noting 'I abhor the sight of blood and cannot stand to see an open wound. This is a serious affliction, for I sometime[s] get dizzy, and occasionally I will pass out with the mere sight of blood.' A memorandum from the commander dated 19 August 1971 documented the rationale to support the applicant's request as a conscientious objector and it was noted that the applicant 'conducted himself in a soldierly manner and cooperated at all times' while in that unit. Testimony from the applicant's in-service

Board proceedings provided (24 August 1972) was reviewed. It appears that counsel stated the applicant completed the requirements of his training program; however, that he was unable to graduate as the executive officer (XO) did not recommend deferring his court-martial for two days to let him receive his MOS.

e. Limited health records were available for review in JLV from 10 August 1988 through 15 September 2019. Per review of JLV, the applicant is not service connected for any conditions. A note dated 15 September 2019 indicated that the applicant participated in an event being held by the Homeless Veterans Program on 15 September 2019. There is no other BH-related documentation available in JLV.

f. 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 event in-service that mitigated his misconduct. However, he contends his misconduct was related to Other Mental Health Issues, and per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(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? No. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of Other Mental Health Issues. However, he contends his misconduct was related to Other Mental Health Issues, and per liberal guidance, his assertion is sufficient to warrant the Board's consideration. Two in-service psychiatric evaluations documented that the applicant did not meet criteria for a psychiatric condition and the evaluation conducted to determine mental competency in 1972 noted that he met retention standards IAW AR 40-501. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH medical mitigation.



BOARD DISCUSSION:

1. 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 counsel's statement, 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 medical review, the Board concurred with the advising official finding insufficient information that the applicant had a condition or event in-service that mitigated his misconduct. The opine noted, the applicant's records were void of any BH diagnosis or treatment history during or after service and he provided no medical documentation supporting his assertion of Other Mental Health Issues.

2. The Board found insufficient evidence of in-service mitigating factors to overcome the misconduct. The Board noted, the applicant provided no character letters of support or post service accomplishments for the Board to weigh a clemency determination. The Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge. Based on the preponderance of evidence the Board found reversal of the previous Board decisions is without merit and denied relief.

3. 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

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

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20090014277 on 17 February 2010, AR20130011079 on 27 February 2014 and AR20220010912 on 26 May 2023.



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. Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), then in effect, provided the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. It provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. This regulation also prescribed that an undesirable discharge was normally issued.
2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.
  - a. An honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. An undesirable discharge is an administrative separation from the Service under conditions other than honorable. It may be issued for unfitness, misconduct, homosexuality, or for security reasons.

3. 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. 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. 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.

4. 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. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. 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.

5. 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.

//NOTHING FOLLOWS//