

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 September 2024

DOCKET NUMBER: AR20240000966

APPLICANT REQUESTS: Reconsideration of his previous request for 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)

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 Docket Number AR20090017106 on 25 March 2010.
2. The applicant states he needs an upgrade to get help for his mental and physical well-being by receiving benefits. He was only 17 years old and suffered from drug and alcohol, depression, anxiety, and addictions. He made a mistake, being young and mentally and physically unstable. The applicant indicates that post-traumatic stress disorder (PTSD) and other mental health are related to his request.
3. The applicant enlisted in the Regular Army on 23 July 1980. He was not awarded a military occupational specialty.
4. The applicant was notified that he was disqualified under the Nuclear Surety Program. The reasons for his disqualification were his poor attitude and lack of motivation toward an assignment involving nuclear duties. The applicant acknowledged notification and elected not to make a statement.
5. The applicant was absent without leave (AWOL) on 3 October 1980 and dropped from the rolls (DFR) on 5 November 1980. He surrendered to military authorities and returned to military control on 16 December 1980.
6. The applicant did not desire a separation medical examination. His Mental Status Evaluation given on 23 December 1980; shows he was psychiatrically cleared for any administrative action deemed appropriate by his commander.

7. Court martial charges were preferred against the applicant on 30 December 1980. His DD Form 458 (Charge Sheet) shows he was charged with violations of the Uniform Code of Military Justice (UCMJ) for AWOL from 3 October 1980 to 16 December 1980.

8. The applicant consulted with legal counsel on 30 December 1980, 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, and of the procedures and rights available to him. He then voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations-Enlisted Personnel), Chapter 10, in lieu of trial by court-martial.

a. He understood that by requesting a discharge he was in effect admitting guilt to the charge against him or to a lesser included offense therein which also authorized a punitive discharge. He did not desire further rehabilitation.

b. He understood he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration (VA), and he could be deprived of his rights and benefits as a veteran under both Federal and State law. He also indicated he understood he could face substantial prejudice in civilian life because of a UOTHC discharge.

c. He elected not to submit statements in his own behalf.

9. The applicant's commander letter, dated 15 January 1981 shows the applicant was unable to adjust to military life and rehabilitation efforts were considered futile. The commander recommended approval and issuance of a UOTHC discharge.

10. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 20 January 1981, and directed that he be issued a UOTHC Discharge Certificate.

11. The applicant was discharged on 29 January 1981. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions Army Regulation 635-200, Chapter 10, for administrative discharge-conduct triable by court-martial. His service was characterized as UOTHC. He completed 3 months and 26 days of net active service. He lost time from 3 October 1980 to 15 December 1980.

12. On 25 March 2010, the ABCMR determined the evidence presented did not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of the case were insufficient as a basis for correction of the applicant's records.

13. On 15 May 2024, an agency staff member, requested the applicant provide medical documents that support his issues of PTSD and other mental health. As of 28 June 2024, no response was provided.

14. 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.

15. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. He contends PTSD and OMH mitigates his discharge.

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:

- Applicant enlisted into the Regular Army on 23 July 1980.
- Applicant was notified that he was disqualified under the Nuclear Surety Program. The reasons for his disqualification was his poor attitude and lack of motivation toward an assignment involving nuclear duties. The applicant acknowledged notification and elected not to make a statement.
- Applicant was absent without leave (AWOL) on 3 October 1980 and dropped from the rolls (DFR) on 5 November 1980. He surrendered to military authorities and returned to military control on 16 December 1980.
- Court martial charges were preferred against the applicant on 30 December 1980. His DD Form 458 (Charge Sheet) shows he was charged with violations of the Uniform Code of Military Justice (UCMJ) for AWOL from 3 October 1980 to 16 December 1980.
- Applicant consulted with legal counsel on 30 December 1980, 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, and of the procedures and rights available to him. He then voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations- Enlisted Personnel), Chapter 10, in lieu of trial by court-martial.
- Applicant was discharged on 29 January 1981. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions Army Regulation 635-200, Chapter 10, for administrative discharge-conduct triable by court-martial, with Separation Code JFS and Reenlistment Code 3B. His service was characterized as UOTHC. He completed 3 months and 26 days of net active service.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "he needs an upgrade to get help for his mental and physical well-being, by receiving benefits. He was only 17 years old, and suffered from drug and alcohol, depression, anxiety, and addictions. He made a mistake, being young and mentally and physically unstable."

d. Due to the period of service, no active-duty electronic medical records were available for review. Hardcopy documentation available for review indicate the applicant underwent a mental status evaluation on 23 December 1980, which shows he was psychiatrically cleared for any administrative action deemed appropriate by his command.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. No VA electronic medical records were available for review, the applicant is not service connected, and he did not submit any medical documentation post-military service substantiating his assertion of PTSD and OMH. On 15 May 2024, an ARBA staff member from the Case Management Division requested the applicant provide medical documentation supporting his contention of OMH and PTSD; no response was provided.

f. 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.

g. Kurta Questions:

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

(2) 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 or after discharge. In addition, the applicant provides no rationale or index trauma for his assertion of PTSD.

(3) 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, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for PTSD or any other mental health condition. And while the applicant self-asserted PTSD

and OMH, he did not provide any medical documentation substantiating any BH diagnosis including PTSD or any other mental health condition.

h. Per Liberal Consideration guidelines, his contention of PTSD and OMH is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

The Board carefully considered the applicant's request, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's PTSD claim and the review and conclusions of the ARBA Behavioral Health Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. The Board found insufficient evidence of in-service mitigating factors and concurred with the conclusion of the medical advising official regarding his misconduct not being mitigated by PTSD or other mental health conditions. Based on a preponderance of the evidence, the Board determined the character of service the applicant received upon separation was not in error or unjust.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

[REDACTED]

[REDACTED]

[REDACTED]

DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined that the overall merits of this case are insufficient as a basis to amend the decision of the ABCMR set forth in Docket Number AR20090017106 on 25 March 2010.

X [REDACTED]

CHAIRPERSON
[REDACTED]

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 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.
2. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a, provides that 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 (emphasis added) or is otherwise so meritorious that any other characterization would be clearly inappropriate.
 - b. Paragraph 3-7b, provides that 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. A characterization of under honorable conditions may be issued only when the reason for the Soldier's separation specifically allows such characterization.

c. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may, submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

3. 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. 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.

4. The Under Secretary of Defense (Personnel and Readiness) issued guidance to Service 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//