

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 30 September 2024

DOCKET NUMBER: AR20240001009

APPLICANT REQUESTS:

- a. Reconsideration of his previous request to upgrade his under other than honorable conditions (UOTHC) discharge to honorable.
- b. A personal appearance before the Board.

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

- DD Form 149 (Application for Correction of Military Record)
- Four character reference letters with one letter in Spanish

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 AR20230002593, 10 October 2023.
2. The applicant states his father was extremely ill and he was deeply stressed. His case is also related to other mental health.
3. The applicant provides four character references; however, one is in Spanish, that show in part the following:
  - a. C\_\_\_V\_\_\_ D\_ M\_\_\_, states he has known the applicant for several decades. The applicant is a man of God and is a member of the Community Board. He demonstrates unwavering integrity and an admirable work ethic, and has left a lasting positive impact on the neighborhood. After C\_\_\_ M\_\_\_ developed Guillain-Barre Syndrome, the applicant left his family for several weeks to help care for him.
  - b. G\_\_\_ C. S\_\_\_, has known the applicant for 40 years, and states he is honest and sincere.

c. M\_\_\_\_ M\_\_\_\_, has known the applicant since childhood. He is responsible, supportive, hardworking, and maintains a conduct of solid moral.

d. Character reference letter in Spanish.

4. A review of the applicant's service record reveals the following:

a. On 23 November 1974, he enlisted in the Army National Guard (ARNG).

b. On 1 May 1975, he entered active duty for training (ADT), was honorably released from active duty on 6 September 1975, and returned to the control of the New York ARNG (NYARNG). His DD Form 214 shows he was credited with 4 months of net active service this period.

c. His duty status changed from present to duty to absent without leave (AWOL) on 14 December 1979; he was dropped from the rolls on 12 January 1980.

d. His duty status changed from dropped from the rolls to returned to military duty on 10 March 1980.

e. A DA Form 3822-R (Report of Mental Status Evaluation), dated 13 March 1980, shows the applicant had no significant mental illness, was mentally responsible, able to distinguish right from wrong, able to adhere to the right, had the mental capacity to understand and participate in board proceedings and met retention standards. He was willing to get out of the Army because his father was deceased, and his mother was alive with two small sisters.

f. Charge Sheet, 1 April 1980 shows court martial charges were preferred against the applicant on 3 April 1980 for violations of the UCMJ. Specifically, for being AWOL on or about 14 December 1979 until 10 March 1980.

g. The Personnel Control Facility Interview Sheet, 1 April 1980, shows:

(1) The applicant requested leave from his ARNG unit to take his father to Puerto Rico. He was told to provide his unit with some proof of his father's conditions. He had a hard time trying to get his father's records and eventually went ahead and took his father.

(2) After the incident the applicant never went back to a meeting. The applicant claimed he did not receive his orders until about a month after he was supposed to report, because he had moved. When he did receive the orders, he just decided to stay home since he was AWOL anyway. He also did not want to leave his mother.

(3) Once the applicant turned himself in, it was noted that the applicant displayed no desire or potential to stay in the Army. Since ARNG members are no longer being called to active duty for missing meetings, the applicant should be discharged under Army Regulation 635-200 (Personnel Separations-Enlisted Personnel,, Chapter 10, with an other than honorable discharge.

h. The applicant consulted with legal counsel on 2 April 1980, and was advised of the basis for the contemplated trial by court-martial for an offense punishable by a bad conduct discharge or a dishonorable discharge, the maximum permissible punishment authorized under the UCMJ, the possible effects of a request for discharge, and of the procedures and rights available to him.

(1) Subsequent to consultation with legal counsel, he requested discharge under the provisions of Army Regulation 635-200 Chapter 10, for the good of the service-in lieu of trial by court-martial. In his request for discharge, he indicated he was making the request of his own free will and he had not been subjected to any coercion whatsoever by any person. He understood by requesting discharge he was admitting guilt to the charges against him or of a lesser included offense that also authorized the imposition of a bad conduct discharge or a dishonorable discharge.

(2) He also indicated he did not desire any further rehabilitation under any circumstances because he had no desire to perform further service; acknowledged he understood that by requesting discharge he was admitting guilt to the charge against him or to a lesser-included offense that also authorized the imposition of a bad conduct or an UOTHC discharge; he was advised of the implications that are attached to it. Moreover, he stated that under no circumstances did he desire further rehabilitation, for he had no desire to perform further military service.

(3) He elected to submit a statement in his own behalf. In his statement he states he went AWOL from the NYARNG unit because he could not get leave to go to Puerto Rico for a period of six months to help his father who was having serious heart troubles. In accordance with the desires of the NYARNG unit, he attempted but failed to get his father's medical records because of the hospital's confidentiality rules. The ARNG unit did not attempt to help him and said it was his problem. He then went AWOL to Puerto Rico with his family and his father died 18 days later. After returning to NY, he received activation orders in January 1980. However, he was living with his mother and other immediate family members who were having difficulties, so he stayed to take care of the problems and help them. He had almost completed his ARNG enlistment when the problems with his father started. He believes he should receive at least a general, under honorable conditions discharge.

i. The applicant's immediate commander recommended approval of the discharge on 24 April 1980 and recommended a UOTHC discharge. In his opinion, the applicant

had no motivation for continued service and would not respond to either counseling or rehabilitation. His chain of command recommended approval.

j. The separation authority approved the applicant's request for discharge on 7 May 1980, and directed he be furnished a DD Form 794A (UOTHC Discharge Certificate), with the reason and authority as "JFS" (Administrative Discharge Conduct Trial by Court Martial), and be reduced to the lowest enlisted grade.

k. On 4 June 1980, the applicant was discharged with an UOTHC discharge. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for conduct triable by court-martial. He was assigned separation code JFS and reenlistment code 3, 3B, and 3C. He completed 2 months and 25 days of net active service this period. He had lost time from 14 December 1979 to 9 March 1980.

l. In a prior request ABCMR Docket Number AR20230002593, 10 October 2023, the Board denied the applicant's request. The Board determined that 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 for correction of his records of the individual concerned.

5. 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.

6. 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.

## 7. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration 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, including PTSD, 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 Army National Guard (ARNG) on 23 November 1974, and he entered active duty for training (AIT) on 1 May 1975. He was honorably released from active duty on 6 September 1975.

- The applicant's duty status changed to AWOL on 14 December 1979, and he was dropped from the rolls. He returned to duty on 10 March 1980. A charge sheet dated 1 April 1980 showed he was charged with being AWOL. He requested discharge under the provisions of Army Regulation 635-200 Chapter 10, for the good of the service-in lieu of trial by court-martial, which was approved by the separation authority.
- The applicant was discharged on 4 June 1980 and completed 2 months and 25 days of net active service this period.

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 his father was very ill, and he was deeply stressed, which led to his misconduct. A Report of Mental Status Evaluation dated 13 March 1980 showed the applicant's mood as "depressed" and memory as "fair," and it was noted that the applicant is "willing to get out from Army because his father is deceased, and his mother is alone with two small sisters." He was determined to be mentally responsible and to have capacity to understand and participate in board proceedings, but it was not indicated as to whether or not he met retention standards. A Personnel Control Facility Interview sheet dated 1 April 1980 showed that the applicant stated he requested leave from his ARNG unit to take care of his father, and he was asked to provide documentation of his father's condition. The applicant claimed he did not receive his orders until about a month after he was supposed to report because he had moved. When he did receive the orders, he decided to stay home since he was AWOL anyway. He also did not want to leave his mother. There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed he initiated mental health treatment through the VA on 20 February 2024, and he reported a needle phobia, which began when he was in basic training because of all the vaccines he received in preparation for serving in Vietnam. He reported symptoms of anxiety and depression, and a history of suicidal ideation and alcohol abuse (sober 20 years). He was diagnosed with Major Depressive Disorder and was given a referral to psychiatry as well as psychotherapy. The next encounter was with psychiatry on 1 August 2024, and the applicant reported continued mood dysregulation but declined medication. On 16 September 2024, he completed a psychotherapy intake where he primarily discussed childhood abuse, the death of his father, and two past suicide attempts. He was diagnosed with an Adjustment Disorder with anxiety and depressed mood, and he was referred to a Chaplain led group. There is indication that follow up is planned although his eligibility for VA services is in question.

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. A Report of Mental Status Evaluation, which was completed when he returned to duty, showed that he reported a depressed mood and family stressors with the loss of his father. However, it did not indicate the presence of a mental health diagnosis, and it did show that the applicant was determined to be mentally responsible. The applicant has been seen at the VA for a mental health evaluation, and he was diagnosed with Major Depressive Disorder and Adjustment Disorder.

(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. He reported that he was under mental distress due to his father's health condition and subsequent death that left him feeling responsible to help his mother and two sisters.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant provides a compelling rationale for being AWOL, and avoidant behavior, such as going AWOL, can be a natural sequela to mental health conditions associated with exposure to traumatic and stressful events. However, the applicant was found to be mentally sound during a mental health evaluation, and he reported a purposeful decision to remain AWOL after receiving his orders, indicating a willful decision.

g. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

#### BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the lengthy AWOL offense leading to the applicant's separation and the lack of mitigation evidence found in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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. 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.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service, in lieu of court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

3. 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 UOTHC 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.

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 DRBs and BCM/NRs when considering requests by veterans for modification of their discharges due in whole or in part to: mental health conditions, including 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. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.



5. 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/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 based on equity, injustice, or clemency grounds, BCM/NRs 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.

6. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army (RA) and the Reserve Components.

a. Chapter 3 prescribes basic eligibility for prior service applicants for enlistment and includes a list of Armed Forces Reentry (RE) Codes, including RA RE Codes.

- Re Code of "1" (RE-1) applies to persons qualified for enlistment if all other criteria are met
- RE-3 applies to persons ineligible for reentry unless a waiver is granted
- RE-4 applies to persons who have a nonwaiverable disqualification and are ineligible for enlistment

b. Chapter 4 states recruiting personnel have the responsibility for initially determining whether an individual meets current enlistment criteria and are responsible for processing waivers.

7. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes) provides the specific authorities and reasons for separating Soldiers from active duty, and the SPD codes to be entered on the DD Form 214 (Certificate of Release or Discharge from

Active Duty). The SPD code KFS is to be used for RA Soldiers discharged for the good of the service in lieu of court martial under the provisions of Army Regulation 635-200, chapter 10.

8. The SPD/RE Code Cross Reference Table provides instructions for determining the RE Code for Active Army Soldiers and Reserve Component Soldiers. This cross reference table shows the SPD code and a corresponding RE Code. The table in effect at the time of his discharge shows the SPD code KFS has a corresponding RE Code of "3, 3B and 3C."

9. 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//