

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 October 2024

DOCKET NUMBER: AR20240001040

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

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

- DD Form 149 (Application for Correction of Military Record), 4 December 2023
- Service records consisting of 10 pages
- letter, National Personnel Records Center, 27 April 2023
- letter of support, DAA____, undated
- letter of support, RAS____, 13 September 2023
- letter of support, CLL____, 9 November 2023
- letter, Veterans Service Officer, 22 August 2024

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 indicates on his DD Form 149; other mental health issues are related to his request. He states:

a. He served honorably and received the Army Good Conduct Medal for the period 1979 to 1981 and he completed Primary Leadership Course. He was under pressure with issues back home and he was fearful of seeking mental health treatment. He struggled with undiagnosed mental health issues after he received his Army Good Conduct Medal and was discharged.

b. While in basic training he was a squad leader and went on to Advanced Individual Training and did well. He became the best unit armorer in the command at Fort Jackson. His Inspector General Inspections were always without any write-ups and his monthly serial number inventories were perfect. He was in charge of 220 M-16-A1 rifles and all his paperwork were in order. He trained all the armorers.

c. In Korea he went to Primary Leadership School, and he was acting first sergeant involving him marching four platoons to and from school each day. Being away from his wife and two sons was very hard at times. When he returned his wife was not at home which was boarded up. He looked for her in Florida and North Carolina. He was confused and could not find her. By this time, he was absent without leave.

3. The applicant provides:

a. Service records (10 pages).

b. Three letters of support:

(1) From DAA____, the pastor of his church who has known him for 6 years. The applicant has been a deacon, doing everything required and going above and beyond. He has good character, and his pastor would highly recommended him for anything.

(2) From RAS____, who has known the applicant since high school. His family has made tremendous contributions to his community. His story is remarkable. For the past 17 years he has worked for the city with distinction and has been married for 14 years. He is active in his church, sings in the church choir, and does an outstanding job caring for his family.

(3) From CLL____, a city commissioner who has known the applicant for most of his life. He recommended him because of his character. He helped found the first group of musicians in his generation. He has helped mentor is family and others in a multi-generation legacy in his community. He has many qualities and is truly a good man.

(4) A letter from his Veteran Service Officer, with a second copy of his statement, in response to a request from the Chief, Case Management Division to provide medical documents supporting his issue. This letter indicates he was not able to afford mental health treatment and could not obtain medial or mental health treatment or care from the Veterans Administration (VA) because of his discharge.

4. A review of the applicant's service records show:

a. On 16 May 1978, he enlisted in the Regular Army. He completed Basic Combat Training, he completed Advanced Individual Training, and he was awarded military occupational specialty 76Y (Unit Supply Specialist). He was subsequently assigned duties as the Armorer in the units to which he was assigned.

b. On 15 July 1980, he was promoted to specialist 4 (SP4)/E-4.

c. On 24 March 1981, he reenlisted for 3 years.

d. On 24 November 1981, he was awarded the Army Good Conduct Medal for the period 14 August 1978 to 5 April 1981.

e. He served in Korea from 26 July 1982 to 27 May 1983.

f. On 29 June 1983, he was reported absent without leave (AWOL) while in transition to his next unit at Fort Knox; his expected report date was 28 June 1983.

g. He was subsequently dropped from the rolls (DFR) on 29 July 1983.

h. On 13 September 1983, he surrendered to military authorities at Fort Jackson and was attached/PDY.

i. His records contain 54 pages of medical documents showing treatments for various physical conditions between his enlistment and September 1983.

j. On 29 September 1983, court-martial charges was preferred against him. A DD Form 458 (Charge Sheet) shows he was charged with one specification of AWOL from 29 June 1983 to 13 September 1983.

k. After consulting with legal counsel on 29 September 1983, the applicant voluntarily requested discharge for the good of the service, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In doing so, he acknowledged that the charges preferred against him under the Uniform Code of Military Justice (UCMJ), authorized the imposition of a bad conduct discharge or dishonorable discharge. He further acknowledged:

- he had not been subjected to coercion with respect to his request for discharge
- he had been advised of the implications that were attached to it
- by submitting the request, he was acknowledging he was guilty of the charge(s) against him or of (a) lesser included offense(s) therein contained which also authorized imposition of a bad conduct or dishonorable discharge
- he could be discharged under other than honorable conditions and he could be ineligible for many or all benefits administered by the VA
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he would forfeit all accrued leave and be reduced to the lowest grade of E-1
- he could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- he was advised he could submit any statements he desired in his own behalf, and elected not to do so

- he was advised of his right to request a separation physical but he elected not to do so

l. On the same date, his request for excess leave was approved.

m. On the same date, the unit commander, Special Processing Company, Fort Knox, recommended approval of his request for discharge for the good of the service, under provisions of Chapter 10, Army Regulation 635-200, with an under other than honorable conditions discharge.

n. On the same date, his intermediate commander recommended approval of his request and forwarded his request to the approval authority.

o. On 3 October 1983, the separation approval authority approved his request for discharge, under the provisions of Chapter 10, Army Regulation 635-200, for the good of the service. He directed issuance of an Other Than Honorable Conditions Discharge Certificate and that he be reduced to private/E-1 in accordance with Army Regulation 635-200.

p. On 20 October 1983, he was discharged. 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, by reason of for the good of the service-in lieu of trial by court-martial, with a character of service of under other than honorable conditions, and a separation code of KFS (JFS). It further shows he had 75 days of time lost from 29 June 1983 to 12 September 1983, and 22 days of excess leave from 29 September 1983 to 20 October 1983. His DD Form 214 further indicates in:

(1) Block 4a (Grade, Rate, or Rank) – PV1.

(2) Block 12c (Record of Service), he completed 5 years, 2 months, and 21 days of net service this period.

(2) Block 13 (Decorations, Medal, Badges, Citations, and Campaign Ribbons Awarded or Authorized: Expert Marksmanship Qualification Badge with Rifle (M-16), Army Good Conduct Medal, Army Service Ribbon, Non Commissioned Officer Professional Development Ribbon, and Overseas Service Ribbon.

(3) Block 27 (Reenlistment Code) – 3B, 3C, 3.

5. There is no evidence indicating he applied to the Army Discharge Review Board for an upgrade of his discharge within that board's 15-year statute of limitations.

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

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to under honorable conditions (general). On his DD Form 149 the applicant indicated Other Mental Health Issues are related to his request. 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 (RA) on 16 May 1978. He was promoted to E4 on 15 July 1980 and re-enlisted on 24 March 1981, 2) he was awarded the Army Good Conduct Medal for the period 14 August 1978 to 05 April 1981, 3) on 29 June 1983 he was reported absent without leave (AWOL) while in transition to his next unit at Ft. Knox from Korea. On 29 September 1983, court-martial charges were preferred against the applicant for one specification of going AWOL from 29 June 1983 to 13 September 1983, 4) the applicant was discharged on 20 October 1983 under the provisions of Army Regulation (AR) 635-200, Chapter 10, in lieu of court-martial.

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. Review of the in-service medical records provided by the applicant do not indicate he sought treatment in-service for any BH-related concerns. A Physical Profile record (undated) shows the applicant was not on a profile for BH reasons. A Report of Medical Examination dated 27 February 1978 [*Advisor's note*: presumably for the purposes of enlistment] shows item number 42, psychiatric, as normal on clinical evaluation. The associated Report of Medical History shows the applicant did not endorse any history of BH-related concerns.

d. A review of JLV was void of medical information. The applicant provided a letter dated 22 August 2024 from a Veteran Service Officer in the Case Management Division stating that the applicant had not sought treatment for his mental health condition due to his inability to afford care and that his character of service has prevented him from enrolling in VA care.

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

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

f. 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. 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 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 warranted. The Board carefully considered 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. One potential outcome was to deny relief based on the absence of medical documentation to support the applicant's contentions. However, upon review of the applicant's petition, available military records and the medical review, the Board considered the advising official finding insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. The opine noted, the applicant's records are 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.

2. The Board under liberal consideration, determined there is sufficient evidence of in-service mitigating factors to overcome the misconduct of AWOL. The Board found the applicant's post service achievements and character letters of support attesting to his character, integrity and community service noteworthy. The Board found that the

discharge characterization for the misconduct was too harsh for the circumstances based on the applicant's previous period of honorable service. Based on this, the Board granted relief to upgrade the applicant's characterization of service to under honorable (general) conditions.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

In addition to the administrative notes annotated by the Analyst of Record (below the signature), 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 amending his DD Form 214 for the period ending 20 October 1983, to show a characterization of general under honorable conditions.

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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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's record shows his DD Form 214, for the period ending 20 October 1983, is missing important entries that affect his eligibility for post-service benefits. As a result, amend the DD Form 214 by adding the following entries in item 18 (Remarks):

- SOLDIER HAS COMPLETED FIRST FULL TERM OF SERVICE
- CONTINUOUS HONORABLE SERVICE FROM 780516 UNTIL 810323

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. Title 10, U.S. Code, Section 1556, 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. 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.

a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. 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.

4. Army Regulation 635-5 (Separation Documents), Interim Change, in effect on 2 October 1989, implemented by DODI 1336.1, provided updated instructions for completing the DD Form 214. For block 18 instructions read, this must be the first entry in block 18. Enter list of reenlistment periods for which a DD Form 214 was not issued, if applicable, e.g., "Immediate reenlistments this period: 761218-791001; 791002-821001." However, for soldiers who have previously reenlisted without being issued a DD Form 214 and who are being separated with any characterization of service except "Honorable," the following statement will appear as the first entry in block 18, "Continuous Honorable Active Service From (first day of service for which a DD Form 214 was not issued, e.g., 761218) Until (date before commencement of current enlistment, e.g., 821001); then enter the specific periods of reenlistments as prescribed above.

5. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

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 a Soldier 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.

6. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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 under other than honorable conditions 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.

7. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, 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 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.

8. 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//