

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 September 2024

DOCKET NUMBER: AR20240001164

APPLICANT REQUESTS: reconsideration of his prior request for an upgrade of his other than honorable conditions discharge.

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)

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 AR20110008128 on 14 February 2012.

2. The applicant states he is requesting an upgrade of his discharge to honorable due to the racial discrimination he experienced. Examples he provides of the racial discrimination include having excrements spread on the wall while he was brushing his teeth and being told to clean the wall using racial epithets. Additionally, he believes his mattress was switched with another Soldier's mattress that had "crabs," which led him to go to sick call for the same reason. The applicant marked other mental health on the DD Form 149 as conditions related to his request.

3. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 11 September 1967.

b. An AE (Army Europe) Form 3087 (Report of Psychiatric Evaluation) dated 9 January 1970 shows the applicant was command referred for evaluation. The physician noted he handles his anger in a passive-aggressive and passive-resistant manner. He felt he had been singled out as the command's "scapegoat," and therefore there was no use in even trying to change his attitude. The applicant believed he had received no breaks, he was not working in his MOS, and it was due to racial discrimination. The psychiatrist concluded that much of the applicant's problem may be

situationally determined as he has reacted immaturely and contributed to his problems. The psychiatrist recommended the applicant be transferred to a new battalion, and counseling deserves a trial in light of his approaching expiration of term of service. Continued passive-aggressive behavior would necessitate administrative actions.

c. The applicant's immediate commander notified the applicant of his intent to separate the applicant under the provisions of AR 635-212 (Personnel Separation – Discharge Unfitness and Unsuitability) for unfitness. The specific reasons for his proposed recommendation were based upon:

- during the period the applicant was assigned to the battalion the applicant was given various duty assignments commensurate with the applicant's training and ability and in each instance, the applicant's performance of duty has been unsatisfactory
- 4 June 68 - absent without leave (AWOL), reduced to private second class.
- 8 August 1968 - disobeying a lawful order
- 6 May 1969 – disorderly conduct and drunkenness, reduced to private.
- 8 May 1969 – AWOL
- 20 June 1969 - AWOL

d. On 4 June 1970, a Board of Officers determined:

- the applicant was undesirable for further retention in the military service because of frequent incidents of a discreditable nature with military authorities and a pattern of shirking
- the applicant was undesirable for further retention because of established pattern of shirking.
- rehabilitation was not deemed possible
- recommended an undesirable discharge

e. On 22 July 1970, an Order of Ejection was issued by the separation authority approving the discharge of the applicant under the provisions of AR 635-212 with an undesirable discharge. The applicant was ordered and directed not to reenter the confines of the base. The applicant acknowledged receipt of the Order of Ejection.

f. Special Orders Number 203, dated 22 July 1970, discharged the applicant from active duty with an effective date of 22 July 1970.

g. On 22 July 1970, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 2 years, 7 months, and 12 days of active service, with 91 days of lost time. He was assigned

separation code SPN 28B and the narrative reason for separation listed as "Code of Conduct," with reentry codes 3B.

5. On 27 September 1978, the Army Discharge Review Board (ADRB) reviewed the applicant's discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. On 14 February 2012, the ABCMR rendered a decision in Docket Number AR20110008128. The Board found in the absence of evidence to the contrary, it is determined that all requirements of law and regulations were met, and the rights of the applicant were fully protected throughout the separation process. Therefore, the Board determined that the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

7. By regulation (AR 635-212), individual was subject to separation for unsuitability when one or more of the following conditions existed:

- inaptitude
- character and behavior disorders
- apathy (lack of appropriate interest, defective attitudes, and inability to expend effort constructively)
- alcoholism
- enuresis
- homosexuality

8. 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.

9. MEDICAL REVIEW:

a. The applicant applied to the ABCMR requesting a reconsideration of his prior request for an upgrade of his other than honorable conditions (UOTHC) discharge. His previous consideration by the ABCMR is summarized in Docket Number AR 20110008128 dated 14 February 2012. On his DD Form 149 he indicated Other Mental Health Issues is related to his request. In the remarks section he noted that he is requesting to upgrade his discharge due to racial discrimination. 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 11 September 1967, 2) The applicant was command-referred for a psychiatric evaluation on 09 January 1970. The provider recommended the applicant be transferred to a new battalion and a trial of counseling in light of his approaching expiration term of service. Furthermore, the provider opined that continued passive-aggressive behavior

would necessitate administrative actions. 3) the applicant's immediate commander notified the applicant of his intent to separate the applicant under the provisions of Army Regulation (AR) 635-212 for unfitness. The specific reasons for the proposed recommendation were based on unsatisfactory performance, for being absent without leave (AWOL) on 04 June 1968, on 08 August 1968 for disobeying a lawful order, on 06 May 1969 for disorderly conduct and drunkenness, and being AWOL on 08 May 1969 and 20 June 1969, 4) on 04 June 1970, a Board of Officers determined the applicant was undesirable for further retention in the military service because of frequent incidents of a discreditable nature with military authorities and a pattern of shirking, rehabilitation was not deemed possible, and was recommended for an undesirable discharge, 5) on 22 July 1970 an Order of Ejection was issued by the separation authority approving the discharge of the applicant under the provisions of AR 635-212 with an undesirable discharge and was directed to not reenter the confines of the base, 6) on 22 July 1970, the applicant was discharged from active duty with a separation code of SPN 28B and the narrative reason for separation listed as "Code of Conduct" with reentry codes 3B. 7) On 27 September 1978, the Army Discharge Review Board (ARDB) denied the applicant's request for an upgrade of his discharge, 8) on 14 February 2012, the ABCMR denied the applicant's previous request for an upgrade.

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. An AE (Army Europe) Form 3087 (Report of Psychiatric Evaluation) dated 9 January 1970 shows the applicant was command referred for evaluation and was diagnosed with Passive-Aggressive Personality-Character and Behavior Disorder [*Advisor's Note*: this is an outdated diagnosis and no longer exists]. The physician noted he handles his anger in a passive-aggressive and passive-resistant manner. The applicant felt he had been singled out as the command's "scapegoat," and therefore there was no use in even trying to change his attitude. The applicant believed he had received no breaks, he was not working in his MOS, and it was due to racial discrimination. The psychiatrist concluded that much of the applicant's problem may be situationally determined as he has reacted immaturely and contributed to his problems. The psychiatrist recommended the applicant be transferred to a new battalion, and a trial of counseling in light of his approaching expiration of term of service. Furthermore, it was documented that continued passive-aggressive behavior would necessitate administrative actions.

d. Review of JLV shows the applicant as deceased as of 16 June 2024. There are no VA records available for review in JLV. It is of note that the applicant was ineligible for VA services due to his characterization of service.

e. The applicant applied to the ABCMR requesting a reconsideration of his prior request for an upgrade of his UOTHC discharge. He indicated Other Mental Health Issues is related to his request. In-service, the applicant was diagnosed with Passive-Aggressive Personality, which is an outdated diagnosis that is no longer in use. The evaluating provider recommended that he be moved to a new Battalion and provided an opportunity for counseling. There were no other in-service BH records available for review nor any post-discharge BH records available for review.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends he experienced 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. The applicant was diagnosed with Passive-Aggressive Personality in-service, which is not a mitigating condition. There were no other BH records available for review. Due to the applicant's characterization of service, he was ineligible for VA services and therefore there were no VA records available for review. In the 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:

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 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 and available military records, the Board found no error or injustice existed to warrant an upgrade. The applicant provided no evidence of post-service achievements or letters in support of a clemency determination. The Board noted the applicant's contention of other mental health issues/conditions; however, reviewed and concurred with the medical advisor's review finding his passive

aggressive personality diagnosis is outdated and no supporting documentation supports his assertion. Based on a preponderance of evidence, the Board determined that the characterization 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
■	■	■	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 amendment of the ABCMR decision rendered in Docket Number AR20110008128 on 14 February 2012.

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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 635-8 (Separation and Processing Documents) states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation.

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.

3. Army Regulation 635-212 (Personnel Separation – Discharge Unfitness and Unsuitability), in effect at the time, set forth the basic authority for the elimination of enlisted personnel for unfitness and unsuitability. Paragraph 6a of the regulation provided that an individual was subject to separation for unfitness when one or more of the following conditions existed: (1) because of frequent incidents of a discreditable nature with civil or military authorities; (2) sexual perversion including but not limited to lewd and lascivious acts, indecent exposure, indecent acts with or assault on a child; (3) drug addiction or the unauthorized use or possession of habit-forming drugs or marijuana; (4) an established pattern of shirking; (5) an established pattern of dishonorable failure to pay just debts; and (6) an established pattern showing dishonorable failure to contribute adequate support to dependents (including failure to comply with orders, decrees or judgments). When separation for unfitness was warranted, an undesirable discharge was normally considered appropriate.

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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.

5. 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, on 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.

6. 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.

7. 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//