

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 May 2025

DOCKET NUMBER: AR20240001237

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable
- change of his narrative reason for separation to "Secretarial Authority"

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

- DD Form 149 (Application for Correction of Military Record)
- Legal brief in support of application, 16 pages
 - Exhibit 1 – Excerpts from his Veterans Affairs (VA) Claim file, letter dated 21 November 1975 shows he was barred from VA benefits
 - Exhibit 2 – Letter of Appreciation from I_H_, an Elder from his church who attests to his faith, service to the church, hard work and integrity
 - Exhibit 3 – Letter of Recommendation from L_K_ who attests to his positive attitude, intellect, and commitment to work
 - Exhibit 4 – Letter of Recommendation from R_P_ who attests to his eagerness to learn, and "can-do" approach to meeting goals
 - Exhibit 5 – Letter of Recommendation from D_P_ a colleague who attests to his professional attitude and approach to his work
 - Exhibit 6 – Letter of Recommendation from K_B_ a work superintendent who attests his unusual initiative when given a task
 - Exhibit 7 – Letter of Recommendation from A_B_ a colleague who attests to his flawless attendance record and positive attitude
 - Exhibit 8 – Letter of Recommendation from R_M_ a construction foreman who attests to his punctuality and productivity
 - Exhibit 9 – Associate in arts degree from Sacramento City College, 16 June 1978
 - Exhibit 10 – Memorandum for Secretaries of the Military Departments, dated July 25, 2018 ("Wilkie Memo")
 - Exhibit 11 – Home Business License that shows he is a self-employed vendor to FedEx Ground

- Exhibit 12 – Voter Registration and Elections Inspector's Worksheet, shows he was selected to serve as an inspector

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 states his discharge is an injustice under guidance set forth in the Wilkie Memo. Current changes in policy would give a Soldier in his circumstance a more favorable outcome than he experienced. In addition, the systematic discrimination and harassment he experienced during his time in the Army provide aggravating and mitigating facts related to the record of his discharge. Moreover, his post-discharge conduct provides ample evidence of rehabilitation.

3. Counsel states in a 16-page brief in support of the application which is available for the Board's review in the supporting documents:

a. The applicant served in the Army from February 1969 until November 1971 – a period of time that the Army has since characterized as fraught with "racial tensions in civilian society combined with growing opposition to the [Vietnam] war" and causing "a major disruption of good order and discipline in the Army."

b. Counsel argues the ABCMR should grant the applicant's request for relief to correct an injustice and, as such, should consider the principles outlined in Section 6 and 7 of the Wilkie Memo. Counsel elaborates the following areas:

- The ABCMR is authorized to grant relief for errors or injustices. This standard is not defined by statute or regulation, but the Wilkie Memo
- He experienced unjust discrimination and harassment – even at the hands of his own leadership
- His misconduct arose from the trauma incurred by harassment from his own unit
- He went absent without leave (AWOL) in an effort to help his struggling family with no support from his chain of command
- He has led a productive life as an upstanding citizen, devoted father, grandfather, and husband, despite enduring the stigma of his UOTHC discharge
- He overcame alcoholism, received his college degree, and is a successful business owner

c. Counsel concludes as stated in the Wilkie Memo, "relief should not be reserved only for those with exceptional aptitude; rather character and rehabilitation should weigh

more heavily than achievement alone." The applicant has been steadily employed, is active in his community and, as evidenced by the letters of support, a positive influence in the lives of the people around him. The ABCMR should grant his request for relief.

4. On 25 February 1969, the applicant was inducted into the Regular Army.
5. He was reported as AWOL on 9 August 1969, and remained absent until he returned to military authorities on 25 September 1969.
6. He was reported as AWOL a second time, on 17 November 1969, and remained absent until he returned to military authorities on 22 November 1969.
7. He was reported as AWOL a third time, on 15 December 1969, and remained absent until he returned to military authorities on 17 December 1969.
8. On 11 February 1970, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for being reported as AWOL on three occasions. His punishment included 45 days of extra duty and restriction.
9. On 20 February 1970, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty, on or about 16 February 1970. His punishment included forfeiture of \$30.00 for one month.
10. He was reported as AWOL a fourth time on 16 December 1970, and remained absent until he returned to military authorities on 12 October 1971.
11. Court-martial charges were preferred against the applicant on 15 October 1971, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with one specification of being reported as AWOL.
12. The applicant consulted with legal counsel on 18 October 1971 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 an undesirable discharge; and the procedures and rights that were available to him.
 - a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service in lieu of trial by court-martial. In his request for discharge, he acknowledged he understood that if his request for discharge was accepted, he may be discharged UOTHC. He understood that, as a result of the issuance of such a discharge, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans

Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State law.

b. The applicant declined to submit a statement in his own behalf.

13. On 20 October 1971, the applicant's commander recommended approval of his request for discharge with issuance of an Undesirable Discharge Certificate. The commander opined that he was not motivated for continued service and would not respond to either counseling or rehabilitation.

14. By legal review on 4 November 1971, the applicant's Chapter 10, separation action was found to be legally sufficient for further processing.

15. Consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge on 11 November 1971, and directed issuance of a DD Form 258A (Undesirable Discharge Certificate).

16. The applicant was discharged on 24 November 1971. His DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, with Separation Program Number 246 (for the good of the service). He was discharged in the lowest enlisted grade and his service characterized as UOTHC. He completed 1 year, 5 months, and 27 days of net active service this period with 321 days of lost time.

17. 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.

18. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends he was experiencing racial discrimination and mental health conditions including PTSD that mitigates his misconduct. 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 was inducted into the Regular Army on 25 February 1969; 2) On 11 February 1970, the applicant accepted non-judicial punishment (NJP) for being AWOL three times (from 9 August-25 September 1969; 17-22 November 1969; and 15-17 December 1969); 3) On 20 February 1970, the applicant accepted NJP for failing to go at the time prescribed to his appointed place of duty; 4) Court-martial charges were preferred against the applicant, on 15 October 1971, for being AWOL from 16 December 1970-12 October 1971; 5) The applicant was discharged on 24 November 1971, Chapter 10, (for the good of the service). His service characterized as UOTHC.

He completed 1 year, 5 months, and 27 days of net active service this period with 321 days of lost time.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) was also examined. No additional medical documentation was provided for review.

c. The applicant asserts he was experiencing racial discrimination and mental health conditions including PTSD, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a mental health condition including PTSD by the VA, and he does not receive any service-connected disability for a mental health condition including PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a mental health 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 misconduct? Yes, the applicant asserts he experienced racial discrimination and mental health conditions including PTSD, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced racial discrimination and mental health conditions including PTSD, while on active service that mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing racial discrimination or mental health conditions including PTSD, while he was on active service. The applicant did engage in avoidant behavior, which could be a natural sequela to PTSD and other mental health conditions along with racial discrimination. However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition or experience during active service. Yet, the applicant contends he was experiencing a mental health condition and an experience that mitigates his misconduct, and per Liberal Consideration the contention alone is sufficient for the board's consideration.

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 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 consideration for requesting upgrade of discharge characterization of service. The Board notes that the applicant was reported AWOL on 9 August 1969 and remained absent until his return to military authorities on 25 September 1969. The applicant was again reported AWOL on 17 November 1969 and remained absent until 22 November 1969. A third AWOL was recorded on 15 December 1969, with the applicant returning to military authorities on 17 December 1969. On 11 February 1970, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ) for three specifications of AWOL. On 20 February 1970, the applicant accepted NJP under Article 15 of the UCMJ for failing to go at the time prescribed to his appointed place of duty on or about 16 February 1970.

2. The record further reflects that the applicant was reported AWOL a fourth time on 16 December 1970 and remained absent until his return to military authorities on 12 October 1971. Subsequently, on 15 October 1971, court-martial charges were preferred against the applicant for violations of the UCMJ. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board reviewed and concurred with the medical advisory noting there is insufficient evidence to support the applicant had a mental health condition or experience that mitigates his misconduct. The Board found no error or injustice in the separation proceedings, narrative reason or the characterization of service. Therefore, the Board denied relief.

3. The Board considered the following Kurta questions under liberal consideration:

a. Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced racial discrimination and mental health conditions including PTSD, which mitigates his misconduct.

b. Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced racial discrimination and mental health conditions including PTSD, while on active service that mitigates his misconduct.

c. Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing racial discrimination or mental health conditions including PTSD, while he was on active service. The applicant did engage in avoidant behavior, which could be a natural sequela to PTSD and other mental health conditions along with racial discrimination.

However, the presence of misconduct is not sufficient evidence of the presence of a mitigating mental health condition or experience during active service. Yet, the applicant contends he was experiencing a mental health condition and an experience that mitigates his misconduct, and per Liberal Consideration the contention alone is sufficient for the board's consideration.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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.

X //SIGNED//

CHAIRPERSON

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 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 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.

4. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR) 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 post-traumatic stress disorder (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.

5. 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//