

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 October 2024

DOCKET NUMBER: AR20240001290

APPLICANT REQUESTS: Reconsideration of his previous request for upgrade of his under other than honorable conditions discharge and a personal appearance before the Board via video/telephone.

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 AR20120019660 on 21 May 2013.
2. The applicant states he suffered severe depression and multiple attempts with suicidal issues while in service. He saw a military counselor also and explained his issues. He did go absent without leave (AWOL) due to the severe depression. His mother was raped during his time in the military causing more depression issues. He is not asking for any major benefits; he just wants his name cleared. He really wanted to serve his country but could not serve due to depression.
3. The applicant enlisted in the Regular Army on 5 October 1995.
4. He was reported AWOL on 23 July 1996. His duty status was changed from AWOL to dropped from the rolls on 22 August 1996.
5. Apprehension efforts were terminated on 27 January 1997, when he returned to the Fort Bragg, NC, Provost Marshall Office.
6. The applicant's record is void of the complete facts and circumstances that led to his separation. However, his service record contains a DD Form 214 that shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for the good of the service in lieu of trial

by court martial with a characterization of service of under other than honorable conditions. It also shows he completed 1 year and 13 days of active service with lost time from 23 July 1996 – 26 January 1997.

7. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

8. On 21 May 2013, in ABCMR Docket Number AR20120019660, the Board considered his application but determined 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 the records of the individual concerned. The Board denied his request.

9. 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.

10. AR 635-200 sets forth the basic authority for the separation of enlisted personnel. 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.

11. 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.

12. 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. He contends PTSD and OMH as related to his request.

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 5 October 1995.
- He was reported AWOL on 23 July 1996. His duty status was changed from AWOL to dropped from the rolls on 22 August 1996.
- Apprehension efforts were terminated on 27 January 1997, when he returned to Fort Bragg, NC, Provost Marshall Office.

- Applicant's record is void of the complete facts and circumstances that led to his separation. However, his service record contains a DD Form 214 that shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for the good of the service in lieu of trial by court martial. His service was characterized as UOTHC with separation code KFS, and a reenlistment code of RE-3.

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 "suffered severe depression and multiple attempts with suicidal issues while in service. He saw a military counselor and explained his issues. He did go absent without leave (AWOL) due to the severe depression. His mother was raped during his time in the military which caused more depression issues. He is not asking for any major benefits; he just wants his name cleared. He really wanted to serve his country but could not serve due to depression."

d. Due to the period of service, no active-duty electronic medical records were available for review. No hardcopy medical documentation was submitted for review.

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 or OMH.

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 could potentially mitigate his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected PTSD and OMH on his application as related to his request.

(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 his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The complete facts and circumstances surrounding his separation are not available for

review. Therefore, it is not possible to determine if a BH condition would mitigate his discharge. However, 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.

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

BOARD DISCUSSION:

1. The Board found the available evidence sufficient to consider this case fully and fairly without a personal appearance by the applicant.
2. 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 mental health 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 there being insufficient evidence to determine if his misconduct was mitigated by a mental health condition. 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**

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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 AR20120019660 on 21 May 2013.

4/1/2025

 [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. Army Regulation (AR) 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. AR 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. 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.

- a. Paragraph 3-7a (1) states 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.
- b. Paragraph 3-7b (1) states 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. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

3. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards 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. 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, 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. 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//