

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 15 October 2024

DOCKET NUMBER: AR20240001698

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD: DD Form 149 (Application for Correction of Military Record)

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 that he received an under other than honorable discharge in lieu of a court-martial. He is requesting an upgrade to the discharge, citing head trauma as the cause of his disciplinary issues. Specifically, he was being transported in the back of a 5-ton vehicle without a cover when the hood flew off and struck him in the head. This incident led to multiple medical conditions. While the Veterans Affairs acknowledges these conditions as service-connected for treatment purposes only due to the nature of the discharge, he believes that his behavior changed after the incident and that it directly contributed to the issues that resulted in the negative discharge.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 6 November 1983.
 - b. On 15 October 1985, a DD Form 458 (Charge Sheet) shows, charges were preferred on the applicant for being absent without authority (AWOL) from on or about 27 July 1985 to on or about 10 October 1985.
 - c. On 15 October 1985, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life
- he may apply to the Army Discharge Review Board or the ABCMR for upgrading

d. The immediate commander request separation action against the applicant for AWOL. He recommended that his period of service be characterized as, under other than honorable conditions. The intermediate commander recommended approval.

e. On 1 August 1985, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge in lieu of trial by courts-martial. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

f. On 12 November 1985, he was discharged from active duty. His DD Form 214 shows was discharged under the provisions of chapter 10 of Army Regulation 635-200 with an under other than honorable conditions characterization of service. He completed 1 year, 10 months, and 24 days of active service with 82 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as "For the Good of the Service - In Lieu of Court-Martial," with reentry code 3b. It also shows he was awarded or authorized:

- Expert Marksmanship Qualification Badge with Rifle Bar (M16)
- Marksman Marksmanship Qualification Badge with Hand Grenade
- Army Service Ribbon

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

5. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for which, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service or in lieu of trial by court-martial.

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 Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 12 November 1985 discharge characterized as under other than honorable conditions. On his DD form 149, he had indicated that TBI (traumatic brain injury) is a condition related to his requests. He states:

"Veteran was being transported in back of a 5-ton vehicle. There was no cover on and the hood flew off, striking the veteran in the head. This has caused a lot of medical conditions. The VA recognizes the conditions and service connected for treatment only, due to the discharge. After this incident, the veteran's demeanor changed and his problems began. We believe this incident is what caused the problems leading to the negative discharge."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The applicant's DD 214 for the period of service under consideration shows he entered the regular Army on 6 November 1983 and was discharged under other than honorable conditions on 12 November 1985 under the separation authority provided by chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel ((5 July 1984): Discharge for the Good of the Service. It does not contain a period of service in a hazardous duty or imminent danger pay area. The DD 214 shows one period of time lost from 27 July 1985 thru 19 October 1985. A Charge Sheet (DD Form 458) shows the applicant was charged with a period of absence without leave from 27 July 1985 thru 10 October 1985.

d. On 15 October 1985, the applicant voluntarily requested discharge for the good of the service under chapter 10 of AR 635-200.

e. No medical documentation was submitted with the application. His period of service predates the EMR. JLV shows the applicant has three service-connected disability ratings of 0% for ear infection, impaired hearing, and tinnitus. He has no mental health or TBI related disability ratings or diagnoses on his medical problems list.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts he had a TBI.

(2) Did the condition exist or experience occur during military service? Applicant asserts the TBI was incurred while in the Army.

(3) Does the condition or experience actually excuse or mitigate the discharge? No: The applicant has submitted no medical documentation indicating a diagnosis of TBI or other mental health condition(s), and none was found in a review of the supporting documentation or the electronic records. Based on review of the medical records, it is the opinion of the ARBA medical advisor that there is insufficient evidence the applicant incurred a TBI during military service which would mitigate his misconduct.

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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. After being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial and carry an under other than honorable conditions discharge. The Board found no error or injustice in his available separation processing. The Board considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official, and agreed with the medical reviewer's determination that there is insufficient evidence of a behavioral health condition that mitigates his misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of available evidence, the Board determined that 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
■	■	■	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. 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. 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. Paragraph 3-7a (Honorable Discharge) 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.

b. Paragraph 3-7b (General Discharge) 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. 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. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

d. Paragraph 10-6. Medical and mental examination provides that a medical examination is not required but may be requested by the Soldier under AR 40-501, chapter 8.

3. 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.

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, 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.

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. 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//