

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 October 2024

DOCKET NUMBER: AR20240002015

APPLICANT REQUESTS: in effect, reconsideration of his previous request to upgrade his under other than honorable conditions characterization of service.

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

- DD Form 149 (Application for Correction of Military Record), 12 January 2024
- DD Form 149, 9 October 2017
- DD Form 214 (Report of Separation from Active Duty), 5 January 1978
- Department of Veterans Affairs (VA) Letter, 7 December 2020
- VA Letter, 5 April 2023
- VA Rating Decision, 9 August 2023
- VA Letter, 17 November 2023
- QTC Medical Services Notification of Appointment, 21 December 2023

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:

- AC95-11934 on 8 May 1996
- AR20220000193 on 9 May 2022.

2. The applicant states, in effect, he would like to be provided with an honorable discharge so that he can have the proper DD Form 214, if needed. He has been trying to get this corrected since 1995. To his knowledge his discharge was a General, under honorable conditions. He would have never left the military under dishonorable conditions. He was a good Soldier. He left the military because his mother was suicidal due to his grandmother's murder.

3. The applicant provides the following:

a. A letter from the VA, dated 7 December 2020, which shows there was an Administrative Decision done by the VA in which it was determined that the applicant's

service in the U.S. Army from 11 August 1976 to 5 January 1978 was Honorable for VA purposes.

b. A letter from a medical doctor at the VA, dated 5 April 2023, which states the applicant is treated at the VA Medical Center and he suffers from PTSD, major depressive disorder, and obstructive sleep apnea. In the doctor's medical opinion, the applicant is disabled and unemployable.

c. VA rating decision, which shows the applicant's evaluation of other specified trauma and stressor-related disorder increased from 70 percent to 100 percent disabling, effective 9 August 2023.

d. A letter from a Sleep Medicine Physician at the VA, dated 17 November 2023, which states the applicant suffers from service-connected post-traumatic stress disorder (PTSD) and obstructive sleep apnea (OSA). His PTSD impacts his ability to effectively treat his OSA. The combination of these disorders makes him unable to work.

e. QTC Medical Services Notification of Appointment, which shows he had a scheduled appointment on 9 January 2024 for a VA compensation and pension examination.

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

a. He enlisted in the Regular Army on 11 August 1976. He held military occupational specialty 31N (Tactical Circuit Controller).

b. On 15 July 1977, he accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for on or about 6 July 1977, willfully disobeying a lawful command from his superior commissioned officer, not to go in the enlisted women's rooms at any time. His punishment included a formal reprimand, that at no time was he to be in an enlisted woman's room.

c. A disposition form from the Battalion Chaplain, dated 18 November 1977, which states the applicant sought counseling for a family problem and over disciplinary action. He went Absent Without Leave (AWOL) on 6 September 1977 to help his mother, who had a severe drinking problem. While gone, he contacted his unit twice, once via the Red Cross and once via phone call. He was encouraged to return to the unit, which he did on 2 November 1977.

(1) The applicant's father and mother had been separated for years, and the applicant was the oldest child and felt responsible for looking after his sick mother and four younger siblings.

(2) Up until this incident, the applicant had a clean record; however, he no longer saw a future for himself in the Army. With the mistakes he made and his family problems weighing on him, he no longer felt motivated to continue in the service. The chaplain recommended the applicant receive a separation under the Expeditious Discharge Program (EDP).

d. Court-martial charges were preferred against the applicant on 19 November 1977. His DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL from on or about 6 September 1977 to on or about 4 November 1977.

e. On 5 December 1977, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial under Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. The applicant acknowledged he made the request of his own free will and was not coerced by any person. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to at least one of the charges against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request were approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the VA, he could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge.

f. On 8 December 1977, the immediate commander recommended approval and issuance of a discharge under other than honorable conditions. The intermediate commander echoed this recommendation.

g. The separation authority approved the recommended discharge on 14 December 1977, directed the applicant be reduced to the lowest enlisted grade, and be issued an under other than honorable conditions discharge.

h. The applicant was discharged on 5 January 1978. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank/grade of private (PV1)/E-1, and his service was characterized as under other than honorable conditions. He completed 1 year and 3 months of net active service during the covered period and had lost time from 6 September 1977 thru 3 November 1977. He was awarded or authorized the Expert Marksmanship Qualification Badge (Rifle).

5. The applicant applied to the ADRB on 20 September 1995. The date of his application was beyond that Board's 15-year statute of limitations and, therefore, his request was not considered.

6. The ABCMR considered the applicant's request to upgrade his under other than honorable conditions characterization of service in ABCMR Docket Number AC95-11934, on 8 May 1996. The Board stated that the applicant's administrative separation was accomplished in compliance with applicable regulations then in effect with no indication of procedural errors which would tend to jeopardize his rights. The Board determined that after reviewing the application and all supporting documents, that relief was not warranted, and denied his request.

7. On 9 May 2022, in ABCMR Docket Number AR202200001936, the Board determined after reviewing the applicant's application and all supporting documents, relief was not warranted. The Board denied his request.

8. The Board should consider the applicant's new argument and his overall record in accordance with the published equity, injustice, or clemency determination guidance.

9. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request to upgrade his under other than honorable conditions characterization of service.

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:

- The applicant enlisted in the Regular Army on 11 August 1976.
- On 15 July 1977, he accepted nonjudicial punishment under the provisions of Article 15, Uniform Code of Military Justice, for on or about 6 July 1977, willfully disobeying a lawful command from his superior commissioned officer, not to go in the enlisted women's rooms at any time. His punishment included a formal reprimand, that at no time was he to be in an enlisted woman's room.
- A disposition form from the Battalion Chaplain, dated 18 November 1977, states the applicant sought counseling for a family problem and over disciplinary action. He went Absent Without Leave (AWOL) on 6 September 1977 to help his mother, who had a severe drinking problem. While gone, he contacted his unit twice, once via the Red Cross and once via phone call. He was encouraged to return to the unit, which he did on 2 November 1977.
- Court-martial charges were preferred against the applicant on 19 November 1977. His DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL from on or about 6 September 1977 to on or about 4 November 1977.
- On 5 December 1977, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-

martial under Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10.

- The applicant was discharged on 5 January 1978. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank/grade of private (PV1)/E-1, and his service was characterized as under other than honorable conditions. He completed 1 year and 3 months of net active service during the covered period and had lost time from 6 September 1977 thru 3 November 1977.
- ABCMR considered the applicant's request to upgrade his under other than honorable conditions characterization of service in ABCMR Docket Number AC95-11934, on 8 May 1996. The Board stated the applicant's administrative separation was accomplished in compliance with applicable regulations then in effect with no indication of procedural errors which would tend to jeopardize his rights. The Board determined after reviewing the application and all supporting documents, that relief was not warranted, and denied his request.
- On 9 May 2022, in ABCMR Docket Number AR202200001936, the Board determined after reviewing the applicant's application and all supporting documents, relief was not warranted. The Board denied his request.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, "he would like to be provided with an honorable discharge so that he can have the proper DD Form 214, if needed. He has been trying to get this corrected since 1995. To his knowledge his discharge was a General, under honorable conditions. He would have never left the military under dishonorable conditions. He was a good Soldier. He left the military because his mother was suicidal due to his grandmother's murder."

d. Due to the period of service no active-duty electronic medical records were available for review. A disposition form from the Battalion Chaplain, dated 18 November 1977, states the applicant sought counseling for a family problem and over disciplinary action. He went Absent Without Leave (AWOL) on 6 September 1977 to help his mother and contacted the unit twice during his AWOL via the Red Cross and phone call. The form further states his parents had been separated for years, and the applicant was the oldest child and felt responsible for looking after his sick mother and four younger siblings. Up until this incident of AWOL, the applicant had a clean record; however, he no longer saw a future for himself in the Army. With the mistakes he made and his family problems weighing on him, he no longer felt motivated to continue in service. The chaplain recommended the applicant receive a separation under the Expeditious Discharge Program (EDP).

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for PTSD. The VA electronic medical record shows he initially sought behavioral health services via the VA, on 6 August 2021, due to symptoms of depression and anxiety. The applicant requested psychotherapy for non-military trauma-related anxiety symptoms and affect regulation. He reported distress related to an experience during military service, when he went to assist his mother who was suicidal following the murder of his grandmother. He was on a 30-day leave but he stayed home for 56 days and was classified as AWOL. He was reportedly threatened with imprisonment or an Article 15 if he did not accept a dishonorable discharge. The applicant reported feeling betrayed by the military and fighting to upgrade the nature of his discharge. In addition, he reported trauma related to multiple family members dying unexpectedly violent deaths. On 14 September 2021, he participated in an in-depth intake and was diagnosed with PTSD and Other Reaction to Stress. He was recommended for and enrolled in Anger Management Group. On 3 December 2021, the applicant participated in a psychiatric assessment and was started on psychotropic medication. He reported a chaotic upbringing with tremendous amount of childhood adversity and trauma, having been raised by his grandmother, witnessing domestic violence, confronted with gun violence, and the murder of several family members. Despite his initial reluctance to engage in treatment, the applicant participated and completed a structured anger management group and is treated via medication management with sporadic participation in individual therapy.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is sufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the mitigating condition of PTSD.

(2) Did the condition exist or experience occur during military service? Yes. The applicant is 100% service connected for PTSD. In addition, the applicant indicates his AWOL was related to a medical emergency since he was caring for his mother who became suicidal following the murder of her mother, the applicant's grandmother.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. The applicant was discharged due to one specification of being AWOL from on or about 6 September 1977 to on or about 4 November 1977. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is 100% service connected for PTSD. Given the association between PTSD and avoidance, the applicant's misconduct of being AWOL is mitigated by his BH condition.

BOARD DISCUSSION:

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 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 the applicant's 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 discharge. Based on this mitigation, the Board determined that the applicant's service clearly did not rise to the level required for an honorable characterization (given his AWOL/lost time); however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests is warranted. The Board determined that such upgrade did not change the underlying reason for separation and thus the narrative reason for separation and corresponding codes should not change.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20220000193 on 9 May 2022. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the DD Form 214 for the period of service ending 5 January 1978 as follows:

- Character of Service: Under Honorable Conditions (General)
- Separation Authority: No Change
- Separation Code: No Change
- Reentry Code: No Change
- Narrative Reason for Separation: No Change

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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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a member who 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. The discharge request may be submitted after court-martial charges are preferred against the member, regardless of whether the charges are referred to a court-martial and regardless of the type of court-martial to which the charges may be referred. The request for discharge may be submitted at any stage in the processing of the charges until final action on the case by the court-martial convening authority. Commanders will ensure that a member is not to be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the member may elect to submit a request for discharge for the good of the service. The member will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a member who is discharged for the good of the service. However, the discharge authority may direct an honorable or general discharge if such are merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. Issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. A general discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable condition is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct and for the good of the service.

2. 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; TBI; sexual assault; sexual harassment. Boards were directed to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to 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 that misconduct which led to the discharge.

3. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

4. 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//