

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 December 2024

DOCKET NUMBER: AR20240002037

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) character of service to honorable.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Office of Representative Tim Burchett, Digital Privacy Release Form and Request for Congressional Assistance, dated 8 August 2023
- Clinical Record Narrative Summary, Lakeshore Mental Health Institute, dated 16 June 1995
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 19 September 1995
- statements of support (3), dated 30 January 2019 to 1 February 2019
- email, Office, Chief of Legislative Liaison, Congressional Inquiry Division, dated 6 February 2024

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 AR20140014238 on 7 April 2015.

2. The applicant states he experienced a traumatic head injury while on active duty at Fort Myers, Arlington, VA. The injury resulted in a hospital stay. He became severely depressed, attempted suicide, and was admitted for mental health care. Although he left his post, he returned voluntarily. He continues to deal with headaches and anxiety. He would like a discharge upgrade so he can receive the help he needs to try to live a normal life.

3. The applicant enlisted in the Regular Army on 11 February 1993, for a 3-year period. Upon completion of initial entry training, he was awarded military occupational specialty 11C (Indirect Fire Infantryman). The highest rank he attained was private first class/E-3.

4. The applicant was reported absent without leave (AWOL) on 6 September 1994 and was subsequently dropped from the rolls on 5 October 1994. He surrendered to military authorities at Fort Knox, KY, and was returned to duty on 13 July 1995.

5. Court-martial charges were preferred against the applicant on 18 July 1995, for a violation of the Uniform Code of Military Justice. The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL, from on or about 6 September 1994 until on or about 13 July 1995.

6. The applicant consulted with legal counsel on 18 July 1995.

a. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice, the possible effects of a UOTHC discharge, and the procedures and rights that were available to him.

b. After receiving legal counsel, he voluntarily requested discharge, in lieu of trial by courts-martial, under the provision of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He acknowledged making this request free of coercion. He further acknowledged understanding 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 Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.

c. In an attached statement in his own behalf, the applicant stated he deserved a general discharge.

(1) He explained that he received a head laceration after his bunk bed ladder fell out from under him in July or August of 1994. He was taken to Rader Emergency, at Fort Myer, VA, where he received 42 stitches over his right eye. No x-rays were ever taken. He began having headaches and blackouts. Stress resulted in hair loss. He was required to work as charge of quarters, and the constant ringing of the telephone was getting to him.

(2) He was given doctor appointments and psychiatric treatment. Multiple situations led to his stress. He was denied a pass to be in his mother's wedding. His platoon sergeant tried to prevent him from getting an MRI [magnetic resonance imaging] at Walter Reed. He felt he was being picked on. He went AWOL to see his family in the hopes that it would relieve some of his stress. Blackouts resulted in him wrecking his

car, and he was disoriented about life itself. If he had the chance, he would have done things differently.

7. On 25 July 1995, the applicant's immediate commander recommended approval of the request for discharge and further recommended a UOTHC discharge. The commander stated there did not appear to be any reasonable ground to believe [the applicant] was, at the time of his misconduct, mentally defective, deranged, or abnormal. The intermediate commander concurred with the recommendation.

8. The separation authority approved the request for discharge on 29 August 1995 and further directed the applicant be reduced in grade to private/E-1 and the issuance of an UOTHC discharge.

9. The applicant was discharged on 19 September 1995, under the provisions of Army Regulation 635-200, Chapter 10, in lieu of trial by court-martial. His DD Form 214 shows his service was characterized as UOTHC, with separation code KFS and reentry code RE-3. He completed 1 year, 9 months, and 2 days of net active service, with lost time from 6 September 1994 to 12 July 1995. He was awarded or authorized:

- National Defense Service Ribbon
- Army Service Ribbon
- Expert Marksmanship Qualification Badge with Rifle bar (M-16)
- Parachutist Badge

10. The applicant submitted a request to the Army Discharge Review Board (ADRB) for an upgrade of his service characterization. Following a request for his records from the repository in St. Louis, MO, the ADRB closed the applicant's case on 10 December 2002, as his records were on loan to another agency.

11. The ABCMR reviewed the applicant's request for a discharge upgrade on 7 April 2015. After careful consideration, the Board determined there was insufficient evidence to support the applicant's request or that his injury was a mitigating factor in his misconduct. The evidence that was presented did not demonstrate the existence of a probable error or injustice. The Board denied the applicant's request for relief.

12. The applicant's record contains multiple pages of written and email correspondence between the Office, Chief of Legislative Liaison, the Army Review Boards Agency (ARBA), and the Office of Representative Tim Burchett, dated 6 February 2024 to 14 November 2024, regarding the status of the applicant's case.

13. As new evidence, the applicant provides:

a. A Digital Privacy Release Form and request for assistance, dated 8 August 2023, shows the applicant requested assistance from the Office of Representative Tim Burchett in the resolution of his discharge upgrade.

b. A Clinical Record Narrative Summary from Lakeshore Mental Health Institute, shows the applicant was admitted at the facility on an emergency basis following depression associated with a recent suicide attempt/gesture. The details of this document will be further summarized in the "Medical Review" portion of the Record of Proceedings (ROP).

c. In three statements of support, dated 30 January 2019 to 1 February 2019, friends and family members of the applicant attest to the changes in the applicant's behavior following his military service. Prior to enlisting, he was a personable, outgoing, happy young man who grew up in a loving, close family. He had a horrible experience in the Army. He was harassed, possibly even hazed. He has withdrawn from his family. He is depressed and paranoid, gets angry easily, experiences headaches, and has difficulty concentrating. He is no longer interested in doing anything. He has experienced unemployment, homelessness, financial issues, and failed relationships.

14. Administrative separations under the provisions of Army Regulation 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An UOTHC character of service is normally considered appropriate.

15. The Board should consider the applicant's overall record in accordance with the published equity, injustice, or clemency determination guidance.

16. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) character of service to honorable. His previous consideration by the ABCMR is summarized in Docket Number AR20140014238 dated 7 April 2015. 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 February 1993, 2) court-martial charges were preferred against the applicant for being absent without leave (AWOL) from 06 September 1994 until on or about 13 July 1995, 3) the applicant voluntarily requested discharge in lieu of trial by courts-martial under AR 635-200, Chapter 10. He submitted a statement on his own behalf indicating that he had a head laceration after his bunk bed ladder fell from under him in July or August 1994 requiring 42 stitches over his right eye and that x-rays were never taken. He stated he began having headaches and blackouts and that stress resulted in hair loss. He noted he was required to work as charge of quarters and the constant

ringing of the telephone was getting to him, 4) the applicant was discharged on 19 September 1995 under the provisions of AR 635-200, Chapter 10, in lieu of trial by court-martial, with a separation code of KFS and reentry code of RE-3.

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. The applicant's service and medical records provided as part of his application were reviewed. A Commander's Report of Inquiry/Unauthorized Absence dated 04 October 1994 documented that the applicant went AWOL on 06 September 1994 after having gone to the doctor earlier that day to get a profile so he would not have to pull CQ duty. It was noted that after he was questioned about his profile, he stated he wanted out of the Army. While he was AWOL, a clinical record narrative summary from Lakeshore Mental Health Institute shows the applicant was admitted on 15 June 1995 and discharged on 22 June 1995 due to symptoms of depression associated with a recent suicide attempt. It was documented that in 1994, while he was in the Army, he had two visits with a psychiatrist but no treatment. He attributed his difficulties to frustration he experienced in the military in July 1994 due to being unable to attend his mother's wedding and the previously mentioned injury requiring 42 stitches. It was noted that the applicant did not recall if he lost consciousness at the time of the fall though went to sick call on several occasions and was prescribed medication for his headaches. The provider noted the applicant was using marijuana on approximately a daily basis for relief of stress and headaches. While admitted, he was prescribed Zoloft (antidepressant) and Restoril (sleep). The applicant was diagnosed with Major Depression (MDD), Single Episode, with Psychotic Features, Marijuana Abuse, and History of Head Injury with Headache.

d. A review of JLV was void of medical information. He is not service-connected for any conditions through the VA though it is of note that his UOTHC characterization of service renders him ineligible for VA services.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant had a potentially mitigating condition or experience in-service, Major Depression. Although the records show the applicant was also diagnosed with Marijuana Abuse, substance use disorders do not constitute mitigating conditions. This Advisor would contend that the applicant's misconduct of AWOL is mitigated by his diagnosis of MDD.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant was diagnosed with MDD by a non-military/civilian provider in-service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant was diagnosed with MDD by a non-military/civilian provider in-service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Review of the applicant's medical records shows that he was diagnosed and treated for MDD, Single Episode, with Psychotic Features, History of Head Injury with Headache and Marijuana Abuse while he was AWOL. As there is an association between poor decision making, difficulty coping with stressors, and depression, there is a nexus between his diagnosis of MDD and his misconduct of going AWOL. As such, BH mitigation is supported.

#### BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. 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.

a. A majority of the Board found no error or injustice in his separation processing. The Board majority considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding sufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. Based on this mitigation and the clemency letters he provides, the Board majority determined that given his extensive lost time (September 1994 to July 1995), his service did not rise to the level required for an honorable discharge; however, a general, under honorable conditions characterization of service is appropriate under published DoD guidance for liberal consideration of discharge upgrade requests. The Board majority further 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.

b. The member in the minority also found no error or injustice. The applicant went AWOL from September 1994 to July 1995. When court-martial charges were preferred against him, he chose to separate. Additionally, the member in the minority noted that there is no evidence of the alleged head injury, and it is the applicant's burden of proof

to show error or injustice. Additionally, the member in the minority noticed that the letters of support are unsigned.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant partial amendment of the ABCMR's decision in Docket Number AR20140014238 on 7 April 2015. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant a DD Form 214 for the period ending 19 September 1995, 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

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to an honorable characterization of service.

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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. Section 1556 of Title 10, U.S. 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 (ABCMR) applicants (and/or their counsel) prior to adjudication.

2. 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. Paragraph 3-7a provides that 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. Paragraph 3-7b provides that 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 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.

3. 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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Records (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including post-traumatic stress disorder; 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 sexual assault or sexual harassment was



unreported, or 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. 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.

4. 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//