

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 8 November 2024

DOCKET NUMBER: AR20240002298

APPLICANT REQUESTS: reconsideration of his request for upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Legal brief in support of the application
- Exhibit 1: DD Form 4 (Enlistment Contract)
- Exhibit 2: DA Form 2-1 (Personnel Qualification Record)
- Exhibit 3: Certificate of Training
- Exhibit 4: DA Form 214 (Report of Separation from Active Duty)
- Exhibit 5: DA Form 2627 (Record of Proceedings under Article 15, Uniform Code of Military Justice (UCMJ))
- Exhibit 6: Reason/authority for separation letter
- Exhibit 7: Mental status evaluation letter
- Exhibit 8: Special Orders #277, discharge order
- Exhibit 9: Certification of Military Service
- Exhibit 10: Veterans Affairs (VA) decision letter
- Exhibit 11: Army Board for Correction of Military Records (ABCMR), Record of Proceedings
- Exhibit 12: Character reference letter from A_F_

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20180011421 on 9 April 2020.

2. Counsel states, in pertinent part:

a. While applicant initially enjoyed his service experience and was looking to becoming a Military Police Officer, he began having issues with other Soldiers and his chain of command while stationed in Germany. He was constantly having to physically fight off other Soldiers who attacked him and was racially harassed by other members,

but his command never properly addressed the problems the unit was having. The applicant's direct superior officer even participated in the harassment, and the applicant believed that his superior targeted him due to his race. This led to the applicant receiving an Article 15 with three stated instances of misconduct: willfully disobeying a lawful order by not having a proper haircut, failure to go to his appointed place of duty, and wrongful appearance in that his uniform was unclean. Before he received the nonjudicial punishment (NJP), the applicant also received information from back home that his father was having severe health problems. After his NJP, his unit then moved for his discharge on the basis of misconduct since it considered his actions triable by court martial and deemed that he was no longer fit for continued service. He was recommended for an unfavorable characterization. At the time, the applicant was 18 years of age and was never told about what his discharge would mean, but he was told that he could go home if he accepted. He agreed to be administratively discharged with an unfavorable characterization in order to return home to see his grandfather.

b. The applicant argues that his chain of command made an error in discretion in separating him with a negative characterization of discharge for minor instances of misconduct. Nonetheless from the outset, the applicant takes full accountability for his actions and deeply regrets the decisions that lead to his instances of misconduct. He understands that by nature of his position as a Soldier, he was held to a high degree of responsibility and personal performance, and he is remorseful that his actions led his chain of command to doubt his intentions on serving the country. Almost 50 years after his discharge, the applicant is embarrassed by the misconduct he committed as a much younger and inexperienced man, and maintains that his misconduct is not reflective of who he is as a person. He contends that his unit acted improperly and failed to address the racial targeting and harassment that he faced in addition to issuing him a discharge that was not reflective of his misconduct. And while he makes no excuses for his misconduct nor asks that this Board condone his immaturity, he believes that further context is needed to fully explain the circumstances surrounding his discharge.

c. In light of the facts and arguments presented herein, the applicant respectfully requests that his discharge status is upgraded due to the injustice he has suffered. The applicant has suffered from the stigma of his characterization, and he is simply looking to clear his good name. He was abused and harassed by an uncaring unit, and he understands the role that he played in his own misconduct as well. He makes no excuses for the actions he made as a younger man, but he believes that this Board can right the wrong that was committed against him with his discharge. He now seeks the Board's assistance in putting an end to the injustice by rectifying his records to reflect the honorable man he has become.

3. On his DD Form 149, the applicant notes other mental health issues are related to his request.

4. On 29 March 1974, the applicant enlisted in the Regular Army.
5. On 1 July 1975, the applicant accepted NJP under Article 15 of the UCMJ, for disobeying a lawful order from his superior noncommissioned officer, on or about 30 June 1975; and failing to go to his appointed place of duty at the time prescribed, on or about 28 June 1975. His punishment included reduction to private (PVT)/E-2, 7 days confinement, and forfeiture of \$40.00 for one month.
6. On 26 September 1975, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
7. Court-martial charges were preferred against the applicant for violations of the UCMJ; however, the relevant DD Form 458 (Charge Sheet) is unavailable for review.
8. The applicant's record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.
9. The applicant was discharged on 4 October 1975. His DD Form 214 shows he was discharged under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. He was discharged in the lowest enlisted grade and his service was characterized as under other than other honorable conditions. He was assigned separation program designator KFS and reentry code 3. He completed 1 year, 6 months and 6 days of active service.
10. The applicant petitioned the ABCMR requesting upgrade of his discharge. On 9 April 2020, the Board denied relief and found insufficient evidence to overcome the nature of his discharge and the applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.
11. The applicant provides:
 - a. A VA letter that shows the VA decided that his period of service was considered honorable for VA purposes based on three minor incidents of misconduct which occurred four months prior to his discharge. The applicant advised the VA that he was experiencing difficulties with his family at that point in time. The VA decided that he had completed almost all his service obligation with no evidence of misconduct. His service was of sufficient length to be of benefit to the nation.
 - b. A character reference letter from his spouse attests to his caring personality traits prior to joining the military, his experiences while serving in the Army, and his life following discharge.

c. A Certification of Military Service letter that reflects his service was terminated by undesirable discharge.

12. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

13. 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.

14. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to honorable. He contends he experienced an undiagnosed mental health condition that mitigates his misconduct.

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 into the Regular Army on 29 March 1974.
- On 1 July 1975, the applicant accepted NJP for disobeying a lawful order and failing to go to his appointed place of duty at the time prescribed. Court-martial charges were preferred against him for violations of the UCMJ, but the charge sheet is not available. The record is void of a separation packet containing the specific facts and circumstances surrounding his discharge processing.
- The applicant was discharged on 4 October 1975 and completed 1 year, 6 months and 6 days of net active service.

c. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant asserts he experienced racial harassment and abuse by other soldiers in his unit and his command did not address the problems. This led to his misconduct, and he indicated mental health as a mitigating factor. The application included a VA letter dated 19 June 2018, which stated that the applicant's service is considered honorable for VA purposes and outlines the rationale for the decision. A Report of Medical Examination dated 22 September 1975 showed no indication of any psychiatric symptoms and stated that the individual met retention standards, was mentally responsible, and had the capacity to understand and participate in board proceedings. There was insufficient

evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed no record of the applicant.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a 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 discharge? Yes. The applicant asserts he had an undiagnosed mental health condition at the time of the misconduct. A Report of Examination showed no indication of any mental health condition while in service, and there were no available post-service records.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Without knowledge of the basis for separation, no opinion regarding mitigation under liberal consideration can be made. However, the applicant's assertion of an undiagnosed mental health condition as a mitigating factor, per Liberal Consideration, warrants consideration by the board.

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 Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with an offense punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's contention of other mental health; however, reviewed and concurred with the medical advisor's review finding

insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust and denied relief.

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 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.

2. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

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 Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September

2014, 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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs 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 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.

6. 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//

