

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 October 2024

DOCKET NUMBER: AR20240002382

APPLICANT REQUESTS: his under than honorable conditions discharge be upgraded to honorable or general, under honorable conditions.

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 AR20140001289 on 23 September 2014.

2. The applicant states he is requesting his under other than honorable conditions discharge be changed to honorable or general, under honorable conditions. He believes he was terminated without having a mental evaluation. He has been having mental problems since leaving the military that cause him act out and do things he knows he should not have done. He tried to explain to his leaders what he was going through, but it did not work. This was the starting point for his periods of unauthorized absences. Had the military only sent him to be mentally evaluated, it would have not happened. The applicant marked "other mental health," on his DD Form 149 as a condition related to his request.

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

a. He enlisted in the Regular Army on 27 March 1979 for 4 years. He completed training with award of the military occupational specialty 11B (Infantryman). The highest grade he held was E-1.

b. He accepted nonjudicial punishment (NJP) on 13 September 1979, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), for being absent without leave (AWOL) from on or about 6 August 1979 through on or about 7 September 1979.

c. Court-martial charges were preferred against the applicant on 10 December 1979 for violations of the Uniform Code of Military Justice (UCMJ). The applicant was permitted and elected to refuse punishment under Article 15, as to the charge and specifications. The available service record was void of any further information pertaining to the below charges listed on the DD Form 458 (Charge Sheet).

- being absent without leave (AWOL) from on or about 22 October 1979 until on or about 25 October 1979
- being AWOL from on or about 9 November 1979 until on or about (no terminal entry)

d. Court-martial charges were preferred against the applicant on 27 November 1985 for violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 7 January 1983 until on or about 14 November 1985, when he was apprehended by civilian authorities.

e. On 27 November 1985, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. 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 apply to the Army Discharge Review Board or the ABCMR for upgrading
- he may expect to encounter substantial prejudice in civilian life
- he elected not to submit matters

f. The commander interviewed the applicant on 27 November 1985 and noted the following:

(1) The applicant acknowledged he had been AWOL approximately 1,042 days due to marital problems. He stated prior to going AWOL he was having marital problems and undergoing divorce proceedings. Unable to cope with the stress of the divorce and

continued military service, he went AWOL. He was apprehended by civilian authorities in [REDACTED] on 14 November 1985 and desired to be discharged.

(2) It was the commander's opinion that the nature and gravity of the offense were sufficiently serious to warrant elimination from the service. In view of the applicant's stated attitude towards the military and lack of rehabilitative potential, he recommended approval of the request for discharge and issuance of discharge certificate under other than honorable conditions.

g. On 17 December 1985, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge for the good of the service under the provisions of AR 635-200, Chapter 10. He would be issued an under other than honorable conditions discharge and reduced to the lowest enlisted rank of private (E-1).

h. On 10 January 1986, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 7 months and 1 day of active service with a total of 1300 days of lost time for the periods listed below.

- 24 July 1979 – 2 August 1979 (16 days)
- 6 August 1979 – 6 September 1979 (32 days)
- 17 September 1979 – 17 September 1979 (1 day)
- 19 September 1979 – 7 October 1979 (19 days)
- 22 October 1979 – 24 October 1979 (3 days)
- 2 November 1979 – 4 January 1983 (1160 days)
- 7 January 1983 – 16 March 1983 (69 days)

4. On 23 September 2014, the ABCMR rendered a decision in Docket Number AR20140001289. The Board found the commander noted the applicant went AWOL due to marital problems and his inability to cope with the stress of divorce and continued military service. There was no mention of any physical or mental condition that was affecting the applicant's status. The applicant voluntarily requested discharge and admitted guilt to the offense for which he was charged. The type of discharge directed and the reasons for separation were appropriate considering all the facts of the case.

5. By regulation (AR 635-200), 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 and/or in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends 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 27 March 1979.
- He accepted nonjudicial punishment (NJP) on 13 September 1979, under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), for being absent without leave (AWOL) from on or about 6 August 1979 through on or about 7 September 1979.
- Court-martial charges were preferred against the applicant on 10 December 1979 for violations of the Uniform Code of Military Justice (UCMJ). The applicant was permitted and elected to refuse punishment under Article 15, as to the charge and specifications. The available service record was void of any further information pertaining to the below charges listed on the DD Form 458 (Charge Sheet).
- being absent without leave (AWOL) from on or about 22 October 1979 until on or about 25 October 1979
- being AWOL from on or about 9 November 1979 until on or about (no terminal entry)
- Court-martial charges were preferred against the applicant on 27 November 1985 for violation of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 7 January 1983 until on or about 14 November 1985, when he was apprehended by civilian authorities.
- On 27 November 1985, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10.
- The commander interviewed the applicant on 27 November 1985 and noted the following: the applicant acknowledged he had been AWOL approximately 1042 days due to marital problems. He stated prior to going AWOL he was having marital problems and undergoing divorce proceedings. Unable to cope with the stress of the divorce and continued military service, he went AWOL. He was

apprehended by civilian authorities in [REDACTED] on 14 November 1985 and desired to be discharged.

- On 10 January 1986, he was discharged from active duty with an under other than honorable conditions characterization of service (UOTHC). His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he completed 7 months and 1 day of active service with a total of 1300 days of lost time, for the periods listed. He was assigned separation code KFS and the narrative reason for separation listed as "In Lieu of Trial by Court-Martial," with reentry code 4.
- On 23 September 2014, the ABCMR rendered a decision in Docket Number AR20140001289. The Board found the commander noted the applicant went AWOL due to marital problems and his inability to cope with the stress of divorce and continued military service. There was no mention of any physical or mental condition that was affecting the applicant's status. The applicant voluntarily requested discharge and admitted guilt to the offense for which he was charged. The type of discharge directed and the reasons for separation were appropriate considering all the facts of the case.

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 "is requesting his under other than honorable conditions discharge be changed to honorable or general, under honorable conditions. He believes he was terminated without having a mental evaluation. He has been having mental problems since leaving the military that cause him to act out and do things he knows he should not have done. He tried to explain to his leaders what he was going through, but it did not work. This was the starting point for his periods of unauthorized absences. Had the military only sent him to be mentally evaluated, it would have not happened."

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 OMH. On 20 August 2004, a member of the ARBA Case Management Division contacted the applicant requesting medical documentation supporting his contention of a behavioral health condition, no response was received.

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 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. 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 any other mental health condition. And while the applicant self-asserted OMH, he did not provide any medical documentation substantiating any BH diagnosis.

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

BOARD DISCUSSION:

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 his misconduct not being 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
■	■	■	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 AR20140001289 on 23 September 2014.

4/1/2025

X

CHAIRPERSON

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, sets forth the basic authority for the separation of enlisted personnel.

a. 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. 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 and/or in lieu of trial by court-martial. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

2. 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 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.

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 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.

4. 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.

5. 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//