

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 October 2024

DOCKET NUMBER: AR20240002409

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions characterization of service to under honorable conditions (General)
- a personal appearance hearing before the Board by video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Certificate of Naturalization, 25 July 1984
- Letter from the Applicant, 16 December 2023
- Letter of Support from K_T_ and K_T_, 16 December 2023
- NGB Form 21 (Statement for Enlistment in the National Guard), 6 February 1976
- NGB Form 21b (Certificate and Acknowledgement of Service Requirements for Individuals Enlisting in the Army National Guard (ARNG) Under the Reserve Enlistment Program – 1963 (Under Age 26), 6 February 1976
- Statement of Understanding, 6 February 1976
- DD Form 214 (Report of Separation from Active Duty), 29 October 1976
- Orders Number 97-1 ARNG, 24 May 1979
- Orders Number 234-253, 21 August 1980
- Orders Number 71-7, 12 March 1981
- DD Form 4 (Enlistment/Reenlistment Document – Armed Forces of the United States), 13 March 1981
- DA Form 2-1 (Personnel Qualification Record), 16 December 1982
- DA Form 2A (Personnel Qualification Record, Part I), 3 June 1983
- Absent without Leave Deserter Data Sheet, 6 June 1983
- DD Form 458 (Charge Sheet), 10 June 1983
- Memorandum, subject: Request for Discharge for the Good of the Service, 2 August 1983
- Orders Number 160-334, 17 August 1983
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 24 August 1983
- DD Form 215 (Correction to DD Form 214), 28 September 1983

- USAFAC Form 0-1072 (U.S. Army Finance and Accounting Center, Indianapolis, IN Request for Information), 11 July 1984

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:

a. His discharge from the military was unjust and unfair. Despite serving in the ARNG and Regular Army, his years of service were not taken into consideration. He received the Army Service Ribbon and the Noncommissioned Officer (NCO) Professional Development Ribbon and served overseas in Germany, which is a testament to his commitment to the service. His request for compassionate reassignment was denied multiple times before 1983. To cope with the pressure, he took a break to visit his family. His family deserves to be taken care of just as he took care of our country. It is important that his family receives the benefits that come with his service to the country.

b. He is proud to have served our country in the military, and he believes that his contributions to our Nation's defense have been substantial. Throughout his service, he had the honor of working alongside some of the most dedicated and selfless individuals he has ever known. He has deployed to various parts of the country and world and have been tasked with completing a variety of missions under difficult circumstances. However, through it all, he remained committed to upholding the values of our great Nation and protecting the freedom that we all hold dear. He put his life on the line to defend our Nation's freedom and his family made sacrifices during his service. He is proud of the time that he served, and he believes that he earned the right to receive benefits that are available to him.

3. The applicant provides:

a. A Certificate of Naturalization dated 25 July 1984, which shows his name as C_ Q_ T_.

b. A letter of support from K_ and K_ T_, the applicant's daughters, dated 16 December 2023, which states, in effect, their father is a man of great strength and character, who has overcome numerous obstacles and made countless sacrifices along the way. He immigrated to this country in search of a better life for himself and his family, despite facing many challenges, he worked tirelessly to build a new life in a

foreign land. When the time came, he willingly joined the military, sacrificing his time and safety to serve a country that was not his own. As a family, they faced numerous hardships, but their dad always prioritized their needs above his own. He worked hard to provide for his family and never once complained about the sacrifices he had to make. In addition to his responsibilities as a provider, he also had to deal with personal struggles, including financial difficulties and health issues. Through his perseverance and determination, he has shown them what it truly means to be strong and resilient. He taught them the value of hard work, sacrifice, and dedication. His unwavering spirit and selflessness have touched the lives of so many. His dedication to serving his country and his unwavering resolve to overcome struggles and obstacles are qualities that make him an honorable veteran.

c. His NGB Form 21 and NGB Form 21b, dated 6 February 1976, which shows he had never been arrested, convicted of a felony or any other offenses, never been imprisoned voluntarily, and he voluntarily enlisted in the ARNG and acknowledged that all the conditions of the enlistment were read and explained to him.

d. A DD Form 214, which shows he was honorably released from active-duty training on 29 October 1976, and reverted to the ARNGUS Hawaii. He completed 3 months and 21 days of net active service during this period.

e. Orders Number 234-253, issued by Headquarters, U.S. Army Field Artillery Center and Fort Sill, Fort Sill, OK on 21 August 1980, which shows he was promoted from private first class (PFC)/E-3 to specialist four (SPC)/E-4, effective 1 September 1980.

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

a. He served in the ARNG from 6 February 1976 to 29 May 1979, as a 12B (Combat Engineer).

b. Orders Number 97-1, issued by the Department of Defense, Office of the Adjutant General, Honolulu, HI on 24 May 1979 discharged the applicant, effective 29 May 1979. He was ordered to report to the U.S. Army Reception Station, Fort Sill, OK for further processing and ultimate assignment to the U.S. Army Field Artillery Center, Fort Sill, OK.

b. On 30 May 1979, he was involuntarily ordered to active duty military service.

c. The applicant was discharged from the Regular Army on 12 March 1981 for immediate reenlistment on 13 March 1981, for a period of 6 years in the pay grade of E-4.

d. The applicant's duty status changed on the following dates:

- present for duty (PDY) to absent without leave (AWOL) – 5 March 1983
- AWOL to dropped from rolls (DFR) – 4 April 1983

e. DA Form 3975 (Military Police Report) shows the applicant was returned to military control on 1 June 1983. He entered the Fort Shafter Military Police Station and surrendered for desertion. He was apprehended and advised of his legal rights.

f. On 1 June 1983, his duty status changed from DFR to PDY.

g. Court-martial charges were preferred against the applicant on 10 June 1983. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 5 March 1983 to on or about 1 June 1983.

h. On 10 June 1983, 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. In doing so, he acknowledged that the charges preferred against him under the Uniform Code of Military Justice, authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged:

- he had not been subjected to coercion with respect to his request for discharge.
- he had been advised of the implications that were attached to it by submitting the request.
- by submitting the request, he was acknowledging he was guilty of the charge(s) against him or of a lesser included offense(s) therein contained which also authorized the imposition of a bad conduct or dishonorable discharge.
- he stated that under no circumstances did he desire further rehabilitation, for he had no desire to perform further military service.
- he further understood that he may be discharged under conditions which were other than honorable and furnished an Under Other Than Honorable Discharge certificate.
- he understood that if his discharge request was approved, he could be deprived of many or all Army benefits.
- he could be ineligible for many, or all benefits administered by the Veteran's Administration.
- he could be deprived of his rights and benefits as a veteran under both Federal and State law.
- he could encounter substantial prejudice in civilian life because of an under other than honorable discharge.

- he understood that there was no automatic upgrading or automatic review of a less than honorable discharge by any Government agency and he must apply to the Army Discharge Review Board (ADRB) or the ABCMR for review of his discharge. He realized that the act of consideration by either Board did not imply that his discharge would be upgraded.
- he was advised he could submit any statements in his own behalf and elected not to do so.

i. DA Form 2496 (Disposition Form) shows on 22 July 1983 his immediate commander recommended approval of the request for discharge in lieu of trial by court-martial, with characterization of service under other than honorable conditions. The intermediate commanders echoed this recommendation.

j. The separation authority approved the recommended discharge on 2 August 1983, directed the applicant be reduced to the lowest enlisted grade, and be issued an under other than honorable conditions discharge.

k. The applicant was discharged on 24 August 1983. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, and his service was characterized as under other than honorable conditions. His DD Form 214 also shows in:

- Item 12c (Net Active Service This Period): 2 years, 2 months, and 14 days
- Item 12d (Total Prior Active Service): 2 years, 1 month, and 14 days
- Item 12e (Total Prior Inactive Service): 2 years, 11 months, and 26 days
- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon and the NCO Professional Development Ribbon
- Item 26 (Separation Code): KFS
- Item 27 (Reenlistment Code): RE-3, 3B, and 3C
- Item 28 (Narrative Reason for Separation): For the good of the service – in lieu of court-martial
- Item 29 (Dates of Time Lost During This Period): 5 March 1983 – 31 May 1983

l. DD Form 215, dated 28 September 1983, shows item 1 (Name), was corrected.

5. There is no indication the applicant applied to the ADRB for review of his discharge processing within that board's 15-year statute of limitations.

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

7. On 13 June 2024, the Director, Case Management Division, sent a letter to the applicant requesting that he provide a copy of his court ordered name change document. On 18 July 2024, the applicant responded with a copy of his Certificate of Naturalization.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to under honorable conditions (general). On his DD Form 149, the applicant indicated Other Mental Health Issues are related to his request. 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 served in the Army National Guard (ARNG) from 06 February 1976 to 29 May 1979 as a 12B (Combat Engineer), 2) he was involuntarily ordered to active duty service on 30 May 1979, 3) the applicant was discharged from the Regular Army (AR) on 12 March 1981 for immediate reenlistment on 13 March 1981, 4) court-martial charges were preferred against the applicant on 10 June 1983 for being absent without leave (AWOL) from on or about 05 March 1983 to on or about 01 June 1983, 5) the applicant was discharged on 24 August 1983 under the provisions of Army Regulation (AR) 635-200, Chapter 10, with a separation code of KFS and reentry codes of RE-3, 3B, and 3C.

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. The applicant did not provide any medical records for review as part of his application. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. A review of JLV was void of any medical documentation with the exception of one non BH-related note. The applicant is not service-connected through the VA for any conditions.

d. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

e. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of Other Mental Health Issues. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation.

BOARD DISCUSSION:

1. 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 being absent without leave from 5 March 1983 to 1 June 1983, 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 issues; however, reviewed and concurred with the medical advisor's review finding insufficient evidence to support the applicant had a condition or experience that mitigated 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.

2. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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, 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 request for discharge may be submitted at any time 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 coerced into submitting a request for discharge for the good of the service. The member is given reasonable time to consult with a 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 separation authority was authorized to direct a general discharge certificate if such was merited by the member's overall record during their current enlistment. For members who had completed entry level status, characterization of service as honorable was not authorized unless the member's record was otherwise so meritorious that any other characterization clearly would be improper.

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. The recipient of a general discharge is normally a member whose military record and performance is satisfactory.

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

3. Army Regulation 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 10, for the good of the service – in lieu of court-martial would receive a separation code of "KFS."

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

5. 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.

6. 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.

7. 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.

8. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity, which is that what the Army did was correct.

a. The ABCMR is not an investigative body and decides cases based on the evidence that is presented in the military records provided and the independent evidence submitted with the application. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

//NOTHING FOLLOWS//