

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 October 2024

DOCKET NUMBER: AR20240002871

APPLICANT REQUESTS:

- reconsideration of his previous request for his under other than honorable discharge to be changed to honorable
- personal appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty)
- Character Reference Letter

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 AR20180011911 on 24 July 2019.

2. The applicant states he respectfully request consideration of changing his discharge status to honorable. At the time of separation, his Captain and First Sergeant informed him they didn't think he was a good fit for service and suggested an early out option. He was instructed to go home, and the paperwork would be taken care of. Unfortunately, that was not the case. He was young and immature and believed what was recommended to be true. He listened to his trusted superiors and followed their directions. After some time passed, he realized that was not the path he should have taken. It was between six months to a year before he was notified that proper protocol was not followed, which resulted in an other than honorable discharge. He deeply regretted his actions and have always wanted to go back and correct his faults. Unfortunately, he felt his only path was to follow the instructions of his superiors. He was ridiculed and harassed daily by his superiors and felt questioning their instructions or seeking further guidance would only make matters worse. Since the time of his AWOL, he was diagnosed with Bi-Polar 1&2, Bi-Polar Hypomania and manic depression. Despite the issues, he has gone on to become a responsible and contributing member of society. He has learned from his mistakes and holds deep

regrets for the way he handled the situation. He knows he cannot go back and change it, so he consistently does his best. He was unaware until recently, the option existed to possibly have his discharge status changed. He has struggle with whether to apply or just leave it as is. He believes in being accountable for his own actions. However, he holds fast to the belief that, at the time he was not given all the facts and information needed to know that this was not his only option. In military service, you are taught to not question your superiors.

3. The applicant provides the following documents:

a. A character reference letter from the applicants' wife that provides her observations of his life and personal qualities and skills.

b. A copy of his DD Form 214 that shows his record of service.

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

a. He enlisted in the Regular Army on 8 January 1986.

b. On 12 January 1988, a DA Form 4187 reflects his status changed from present for duty to absent without leave (AWOL) from his unit, A Company, 3rd Battalion, 504th PIR (Parachute Infantry Regiment), at Fort Bragg, NC.

c. On 11 February 1988, a DA Form 4187 reflects the applicant was dropped from the roll of his unit.

d. On 6 September 1989, a DA Form 4187 reflects the applicant was apprehend by military police and returned to military control.

e. On 7 September 1989, a DA Form 3975 reflects that the applicant was escorted to Fort Ord, California and released to military police.

f. On 13 September 1989, a DD Form 458 (Charge Sheet) shows court-martial charges were preferred for one with the specification, of being AWOL from 12 January 1988 to 6 September 1989.

g. 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 – Active Duty Enlisted Administrative Separations), 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
- 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

h. On 1 December 1989, the commander's recommendation for the under other than honorable discharge, for the good of the service was approved by the commander of the personnel control facility, located at Fort Ord, CA.

i. On 4 December 1989, the discharge was reviewed for legal sufficiency by the Staff Judge Advocate.

j. On 13 December 1989, the discharge was recommended for approval by the executive officer of the Bayonet Combat Support Brigade, located at Fort Ord, CA.

k. On 14 December 1989, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge for the good of the service. He would be issued an under other than honorable conditions discharge and reduced to the lowest enlisted pay grade.

l. On 27 December 1989, he was discharged from active duty. His DD Form 214 shows he was discharged under the provisions of chapter 10 of AR 635-200 with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 2 years, 3 months, and 26 days of active service with 106 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as "For the Good of Service-In Lieu of Court-Martial," with reentry code 3. It also shows he was awarded or authorized:

- Army Service Ribbon
- Marksman Marksmanship Badge Rifle, M-16
- Expert Marksmanship Badge Grenade
- Parachutist Badge
- Expert Infantryman Badge

4. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

5. On 24 July 2019, the ABCMR rendered a decision in Docket Number AR20180011911. The Board applied Department of Defense standards of liberal consideration to the complete evidentiary record and did not find any evidence of error, injustice, or inequity. He did not provide character witness statements or evidence of post-service achievements for the Board to consider. Based upon the lengthy period of AWOL, which only ended as a result of apprehension, as well as the failure to accept responsibility and show remorse for the events leading to his separation, the Board agreed that the applicant's discharge characterization was warranted as a result of the misconduct.

6. By regulation, AR 635-200, an individual who has 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. An Under Other Than Honorable Conditions Discharge Certificate will normally be furnished an individual who is discharged for the good of the service.

7. By regulation, AR 15-185 (ABCMR) 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.

8. The applicant provided no medical documents in support of his issues with Other Behavioral Health and Sexual Assault/Harassment for the Board to consider. Based on the applicant's condition the Army Review Board Agency medical staff provided a medical review for the Board members. See "MEDICAL REVIEW" section.

9. 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.

10. 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 and harassment 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 8 January 1986.
- On 12 January 1988, a DA Form 4187 reflects his status changed from present for duty to absent without leave (AWOL) from his unit, A Company, 3rd Battalion, 504th PIR, at Fort Bragg, NC.

- On 11 February 1988, a DA Form 4187 reflects the applicant was dropped from the roll of his unit.
- On 6 September 1989, a DA Form 4187 reflects the applicant was apprehended by military police and returned to military control.
- On 13 September 1989, a DD Form 458 (Charge Sheet) shows court-martial charges were preferred against the applicant for one specification of being absent without authority (AWOL) from 12 January 1988 to 6 September 1989.
- After consulting with legal counsel, he requested a discharge for the good of the service under the provisions of AR 635-200 (Personnel Separations – Active Duty Enlisted Administrative Separations), Chapter 10.
- On 27 December 1989, he was discharged from active duty with an other than honorable conditions characterization of service. His DD Form 214 shows he completed 2 years, 3 months, and 26 days of active service with 106 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as “For the Good of Service-In Lieu of Court-Martial,” with reentry code 3.
- On 24 July 2019, the ABCMR rendered a decision in Docket Number AR20180011911. The Board applied Department of Defense standards of liberal consideration to the complete evidentiary record and did not find any evidence of error, injustice, or inequity. He did not provide character witness statements or evidence of post-service achievements for the Board to consider. Based upon the lengthy period of AWOL, which only ended as a result of apprehension, as well as the failure to accept responsibility and show remorse for the events leading to his separation, the Board agreed that the applicant's discharge characterization was warranted as a result of the misconduct.

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, “at the time of separation, his Captain and First Sergeant informed him they didn't think he was a good fit for service and suggested an early out option. He was instructed to go home, and the paperwork would be taken care of. Unfortunately, that was not the case. He was young and immature and believed what was recommended to be true. He listened to his trusted superiors and followed their directions. After some time passed, he realized that was not the path he should have taken. It was between six months to a year before he was notified that proper protocol was not followed, which resulted in an other than honorable discharge. He deeply regretted his actions and have always wanted to go back and correct his faults. Unfortunately, he felt his only path was to follow the instructions of his superiors. He was ridiculed and harassed daily by his superiors and felt questioning their instructions or seeking further guidance would only make matters worse. Since the time of his AWOL, he was diagnosed with Bi-Polar 1&2, Bi-Polar Hypomania and manic depression. Despite the issues, he has gone on to become a responsible and

contributing member of society. He has learned from his mistakes and holds deep regrets for the way he handled the situation. He knows he cannot go back and change it, so he consistently does his best. He was unaware until recently, the option existed to possibly have his discharge status changed. He has struggle with whether to apply or just leave it as is. He believes in being accountable for his own actions. However, he holds fast to the belief that, at the time he was not given all the facts and information needed to know that this was not his only option. In military service, you are taught to not question your superiors."

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 and no VA electronic medical records were available for review. Inconsistent with his assertion of being "diagnosed with Bi-Polar 1&2, Bi-Polar Hypomania and manic depression," he did not submit any medical documentation post-military service substantiating this assertion. This would be unusual since diagnoses of this kind would be provided by a psychiatrist or other mental health provider. Further inconsistencies appear in the applicant's statement, specifically that "he was unaware until recently, the option existed to possibly have his discharge status changed". Given, he has previously applied to the ABCMR requesting an upgrade.

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 and harassment 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. Per his assertion that he was “ridiculed and harassed daily by his superiors”, the applicant provides no further information, and it is unclear if his allegations are simply related to the expectations and rigors of military life.

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

BOARD DISCUSSION:

1. The Board determined 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.
2. 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 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 his 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 misconduct. Also, the applicant provided no evidence of post-service achievements or letters of reference of a persuasive nature in support of a clemency determination. Based on a preponderance of available evidence, the Board determined that 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 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, sets forth the basic authority for the separation of enlisted personnel.
 - a. Honorable Discharge states 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. General Discharge states 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. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

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 (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.

4. AR 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//