

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 November 2024

DOCKET NUMBER: AR20240002981

APPLICANT REQUESTS: upgrade of his characterization of service from under other than honorable conditions (UOTHC) to honorable, and an appearance before the Board via video/telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- medical documentation treatment plan, 11 May 1990
- six certificates
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 13 September 1994

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, in effect, when he was in the service, he suffered from attention deficit hyperactivity disorder (ADHD), he also suffered molestation as a child, which interfered with his decision making and compulsiveness. He saw a mental health therapist most of his childhood up until his graduation from high school. As an adult, his therapy did not continue, he was unable to hold a job and on the verge of being homeless. His father forced him to join the Army. He is now 51 years old and mature enough to realize the mistakes he made in the past; he wishes he could take them back, but he cannot. He is truly sorry for the bad actions he made and did while serving and wishes he had not failed and retired from the service with honorable conditions.
3. On his DD Form 149, he indicates other mental health is related to his request.
4. The applicant enlisted in the Regular Army on 30 October 1992, for a 4-year period. He was awarded the military occupational specialty of 63B (Light Wheel Vehicle Mechanic). The highest rank he attained was private/E-2.

5. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with:

- stealing a computer, the value of \$2589.00, the property of the United States Army on or about 19 July 1994
- stealing a computer power supply, a value of less than \$100.00, the property of the United States Army, on or about 19 July 1994
- unlawfully entering an office with intent to commit a criminal offense, to wit: larceny on or about 19 July 1994
- disposing without proper authority on or between 19 July 1994 and on or about 8 August 1994 deleting computer files of some value the property of the United States
- signing an official statement with the intent to deceive on or about 20 July 1994, by answering "NO. When I was buffing, I noticed only a monitor there on his side desk. I didn't see any computer" or words to that effect when he was asked if he took the computer
- wrongfully and unlawfully subscribing under lawful oath a false statement in substance on or about 20 July 1994 in an affidavit

6. The applicant consulted with legal counsel on 6 September 1994, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an UOTHC character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he understood he may encounter prejudice in his civilian life. He provided a written statement requesting a general discharge so that he could start his life over.

7. On 6 September 1994, the applicant's immediate and intermediate commander's recommended approval of the requested discharge and further recommended the applicant be separated with a UOTHC characterization of service.

8. The separation authority approved the applicant's request for discharge in lieu of trial by court-martial on 8 September 1994. He further directed the applicant be reduced to the lowest enlisted grade and furnished an UOTHC discharge.

9. The applicant was discharged on 13 September 1994, under the provisions of AR 635-200, Chapter 10, for the good of service, in lieu of trial by court-martial, in the grade of E-1. His DD Form 214 shows his character of service was UOTHC, with separation code KFS, and reentry code RE-3. He was credited with 1 year, 10 months, and 14 days of net active service. He was awarded or authorized the following decorations, medals, badges, citations, and campaign ribbons:

- Army Service Ribbon
- National Defense Service Medal
- Sharpshooter Marksmanship Qualification Badge (M-16 Rifle)

10. The applicant additionally provides medical documentation from 16 May 1989 showing he was being treated by a social worker and psychiatrist, six certificates issued to him while in the Army showing he completed basic training course and 63B for Light Wheel Vehicle Mechanics Course, he was affiliated with the United States Army Ordnance Corps, he completed Victory Run and Air Assault School, and he received a certificate of achievement for meritorious achievement.

11. Discharges under the provisions of AR 635-200, Chapter 10, are voluntary requests for discharge for the good of the service from the Soldier to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.

12. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

13. MEDICAL REVIEW:

a. Background: The applicant is requesting 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 30 October 1992.

- Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with:
- stealing a computer, the value of \$2589.00, the property of the United States Army on or about 19 July 1994
- stealing a computer power supply, a value of less than \$100.00, the property of the United States Army, on or about 19 July 1994
- unlawfully entering an office with intent to commit a criminal offense, to wit: larceny on or about 19 July 1994
- disposing without proper authority on or between 19 July 1994 and on or about 8 August 1994 deleting computer files of some value the property of the United States
- signing an official statement with the intent to deceive on or about 20 July 1994, by answering "No. When I was buffing, I noticed only a monitor there on his side desk. I didn't see any computer" or words to that effect when he was asked if he took the computer
- wrongfully and unlawfully subscribing under lawful oath a false statement in substance on or about 20 July 1994 in an affidavit
- The applicant consulted with legal counsel on 6 September 1994, and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service).
- The applicant was discharged on 13 September 1994, under the provisions of AR 635-200, Chapter 10, for the good of the service, in lieu of trial by court-martial, in the grade of E-1. His DD Form 214 shows his character of service was UOTHC, with separation code KFS, and reentry code RE-3. He was credited with 1 year, 10 months, and 14 days of net active service.

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, "when I was in the service, I suffered from ADHD and hyperactivity. I had also been molested as a child which interfered with my decision making and compulsiveness. I had seen a mental health therapist most of my childhood up to my graduation from high school. I moved to Las Vegas with my father and didn't continue therapy. I couldn't hold a job and was on the verge of being homeless as a young adult. My father forced me into joining the Army and I did. I'll be 51 years old this year and have matured enough to realize all the bad mistakes I have made in the past and wish I could take them back but cannot. I am truly sorry for the actions I did and the bad decisions I made while serving and wish to this day that I hadn't screwed up and retired from service in honorable conditions. Please consider my plea for a change in discharge status."

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 related to the applicant's time in service. The applicant does provide a document labeled treatment plan, dated 8 May 1990. The document is an Individualized Education Plan (IEP) that documents the goals of the applicant while attending an alternative school program. The applicant's goals focused on issues related to his social skills and conflict with his mother. The documentation does not provide a diagnosis, background information, or treatment history.

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. The applicant did not submit any medical documentation post-military service substantiating his assertion of ADHD and history of childhood trauma prior to military service.

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. However, it is unlikely that any BH condition would mitigate his misconduct and subsequent 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 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. However, regardless of diagnosis neither his asserted ADHD nor his reported history of childhood trauma have an association with larceny or making a false official statement. Neither issue/condition interferes with the capacity to distinguish right from wrong and act in accordance with the right.

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.

a. The applicant was charged with commission of offenses (stealing a computer, stealing a computer power supply, unlawfully entering an office with intent to commit a criminal offense, disposing without proper authority, signing an official statement with the intent to deceive, and wrongfully and unlawfully subscribing under lawful oath a false statement) 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 separation processing.

b. The Board also 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 insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. Also, the applicant provided insufficient evidence of a persuasive nature of post-service achievements or letters of reference in support of a clemency determination. Therefore, 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.

3. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction is completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

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

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the vidence 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.

11/18/2024

X

CHAIRPERSON
Signed by: BECKLES.MARIO.RALPH.1099491775

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.

ADMINISTRATIVE NOTES:

Add the Air Assault Badge to his DD Form 214

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. 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 applicants (and/or their counsel) prior to adjudication.

3. 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 regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.

4. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, provided guidance for the administrative separation of enlisted personnel:

a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the Uniform Code of Military Justice and the Manual for Courts-Martial, includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the Service. The discharge request may be submitted after court-martial charges are preferred against the member, or, until final action on the case by the court-martial convening authority. A member who is under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An under other than honorable conditions discharge certificate normally is appropriate for a member who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. The 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. An under honorable conditions (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.

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

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 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.

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//