

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 22 November 2024

DOCKET NUMBER: AR20240002988

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

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

- DD Form 149 (Application for Correction of Military Record)
- Psychological Assessment Report, 3 January 2024

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 AR20230001642 on 20 October 2023.
2. The applicant states he is resubmitting information to support the upgrade of his discharge. He has submitted his psychosocial assessment. He regrets that he was unable to submit evidence in support of his claim for upgrading his discharge from other than honorable. He was unable to get the information to the Board in a timely manner.
3. The applicant was inducted into the Army of the United States for a 2-year service obligation on 2 October 1969.
  - a. The applicant's DA Form 20 (Enlisted Qualification Record) shows the following entries:
    - 13 October 1969 the applicant reported to Fort Bragg, NC for basic training
    - for an unknown reason his training was interrupted & resumed on 10 December 1969
    - 18 December 1969, he was reassigned to Fort Polk, LA, for completion of initial entry training
    - 4 January 1970, he was reported absent without leave (AWOL) and on 2 February 1970 he was dropped from the unit rolls as a deserter

b. On 9 July 1970, following his return from AWOL on 7 July 1970, the applicant underwent a separation examination and reported no significant medical history. The examining physician found him qualified for separation.

c. On 10 July 1970, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL from Fort Polk, LA on or about 4 January 1970 until on or about 7 July 1970.

d. On 13 July 1970, the applicant consulted with counsel and was advised of the contemplated trial by court-martial for an offense (AWOL) punishable by a bad conduct or a dishonorable discharge. Following this consult, the applicant voluntarily requested discharge for the good of the service, in lieu of trial by court-martial, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. He acknowledged the following:

(1) He was making this request of his own free will and had not been subjected to any coercion whatsoever by any person; he had been advised of the implications that are attached to it.

(2) He understood that as a result of his request he could be discharged under other than honorable conditions and furnished an undesirable discharge and if his request for discharge is accepted, he may be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate.

(3) He unacknowledged he had been advised and understood the possible effects of an under other than honorable discharge and that, as a result of the issuance of such a discharge, he would be deprived of many or all Army benefits, that he may be ineligible for many or all benefits administered by the Veterans Administration, and that he may be deprived of his rights and benefits as a veteran under both Federal and State law. He also understood that he may expect to encounter substantial prejudice in civilian life because of an under other than honorable discharge.

(4) He elected not to submit a statement.

e. On 16 July 1970, the applicant's commander recommended approval of his request for discharge. He further recommended an undesirable discharge.

f. On 23 July 1970, the separation authority approved the applicant's request for discharge for the good of the service. He further directed the applicant be reduced to the lowest enlisted grade and issued a DD Form 258A (Undesirable Discharge Certificate).

g. On 23 July 1970, the applicant was discharged accordingly. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of AR 635-200, chapter 10 (in lieu of trial by court-martial) in the rank of private/E-1, with an under other than honorable conditions characterization of service (Separation Program Number 246 and Reenlistment Code 3B). He completed 3 months and 18 days of active service with 184 days of lost time from 4 January to 6 July 1970. He was not awarded a military occupational specialty.

4. There is no indication the applicant petitioned the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

5. On 20 October 2023, the Board considered his petition for an upgrade of his discharge.

a. Prior to adjudicating his case, the Army Review Boards Agency (ARBA) medical advisor reviewed the supporting documents and available military service records. The applicant had asserted he experienced the death of his father and other family stressors which resulted in him experiencing symptoms of anxiety and depression. There was no indication the applicant reported mental health symptoms while on active service. Based on the available information, there is insufficient evidence to support the applicant had condition or experience that mitigated his misconduct.

b. After reviewing the application and all supporting documents, the Board found that relief was not warranted. The Board carefully considered the applicant's request, supporting documents available for review and evidence in the records. The Board considered the frequency and nature of the misconduct, the reason for separation and whether to apply clemency. Based on the multiple offenses leading to the applicant's separation, the Board concluded that any mitigation for the offenses was outweighed, and the applicant received an equitable and just discharge. After due consideration of the request, the Board determined the evidence presented does not meet applicable regulatory guidance and there is no basis upon which to warrant a recommendation for relief.

6. The applicant provides a Psychological Assessment form, dated 3 January 2024.

7. 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.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request to upgrade his under other than honorable conditions discharge. He asserts grief, anxiety, and depression 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:

- The applicant was inducted into the Army of the United States for a 2-year service obligation on 2 October 1969.
- On 4 January 1970, he was reported absent without leave (AWOL) and on 2 February 1970, dropped from the unit rolls as a deserter.
- On 10 July 1970, court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL from Fort Polk, LA on or about 4 January 1970 until on or about 7 July 1970.
- On 13 July 1970, the applicant consulted with counsel and was advised of the contemplated trial by court-martial for an offense (AWOL) punishable by a bad conduct or a dishonorable discharge. Following this consult, the applicant voluntarily requested discharge for the good of the service, in lieu of trial by court-martial, under the provisions (UP) of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10.
- On 23 July 1970, the applicant was discharged. His DD Form 214 confirms he was discharged under the provisions of AR 635-200, chapter 10 (in lieu of trial by a court-martial) in the rank of private/E-1, with an under other than honorable conditions characterization of service (Separation Program Number 246 and Reenlistment Code 3B). He was credited with completing 3 months and 18 days of net active service this period with 184 days of lost time from 4 January to 6 July 1970. He was not awarded a military occupational specialty.
- On 20 October 2023, the Board considered his petition for an upgrade of his discharge. The Board determined the evidence presented did not meet applicable regulatory guidance and there was no basis upon which to warrant a recommendation for relief.

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 states, he is resubmitting information to support the upgrade of his discharge. He has submitted his psychosocial assessment. He regrets that he was unable to submit evidence in support of his claim for upgrading his discharge from other than honorable. He was unable to get the information to the Board in a timely manner.

d. Due to the period of service no active-duty electronic medical records were available for review. On 9 July 1970, following his return from AWOL on 7 July 1970, the

applicant underwent a separation examination and reported no significant medical history. The examining physician found him qualified for separation.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. There was no electronic medical documentation available for review indicating the applicant has been treated or diagnosed by the VA for any behavioral health condition. The applicant provides a psychosocial assessment from an unlicensed provider practicing in an educational setting that does not contain a diagnosis but summarizes his reported despair related to his father's death.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence at this time to support the applicant had a BH condition during military service that mitigates his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts grief, anxiety, and depression related to the death of his father.

(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.

(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 mental health condition. The applicant provides a psychosocial report from an educational setting provided by an unlicensed provider that does not contain a diagnosis but summarizes his reported despair related to his father's death.

h. Per Liberal Consideration guidelines, his contention of grief, anxiety, and depression is sufficient to warrant 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 anxiety and depression; however, reviewed and concurred with the medical advisor's review finding insufficient evidence at this time to support the applicant had a behavioral health condition during military service 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.

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 amendment of the ABCMR decision rendered in Docket Number AR20230001642 on 20 October 2023.

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 (AR) 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 provides that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

a. Paragraph 3-7a states that 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. Paragraph 3-7b states that 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.

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. 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, 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. 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//