

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 December 2024

DOCKET NUMBER: AR20240003356

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions (UOTHC) character of service to under honorable conditions (general) and an appearance before the Board via video or telephone.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), for the period ending 13 November 1968
- letter, Department of Veterans Affairs (VA), dated 6 December 2023

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 he was sexually assaulted while he was in the military, which contributed to his receiving a UOTHC discharge. He is presently being treated for military sexual trauma (MST). He suffers from mental health conditions and other conditions related to his military service for which he would like to file a compensation claim.

3. The applicant enlisted in the Regular Army on 10 January 1966. Upon completion of initial entry training, he was awarded military occupational specialty 11E (Armor Crewman). The highest rank he attained was private first class/E-3.

4. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on eight occasions:

a. On 18 July 1966, for failure to obey a lawful order, on or about 15 July 1966. His punishment consisted of 14 days restriction, 14 days of extra duty, and forfeiture of \$25.00 pay.

b. On 3 September 1966, for damaging the walls of the billets and the room number signs, military property of the United States, on or about 25 August 1966, and for breaking restriction, on or about 27 August 1966. His punishment consisted of 45 days of extra duty and 45 days restriction.

c. On 25 October 1966, for willfully disobeying a lawful order and for being derelict in his duty while on guard duty, on or about 24 October 1966. His punishment consisted of 14 days restriction, 14 days of extra duty, and forfeiture of \$10.00 pay.

d. On 24 July 1967, for being absent without authority (AWOL), from on or about 19 July 1967 until on or about 20 July 1967. His punishment consisted of seven days of extra duty, seven days restriction, and forfeiture of \$12.00 pay.

e. On 11 August 1967, for feigning a dental illness to avoid duty, on or about 9 August 1967. His punishment consisted of 14 days of extra duty, 14 days restriction, forfeiture of \$19.00 pay, and reduction to private/E-2.

f. On 15 December 1967, for being AWOL, on or about 3 December 1967. His punishment consisted of 14 days of extra duty, 14 days restriction, and forfeiture of \$14.00 pay.

g. On 10 January 1968, for being AWOL, from on or about 25 December 1967 until on or about 26 December 1967. His punishment consisted of reduction to private/E-1, forfeiture of \$60.00 per month for two months, 45 days of extra duty, and 45 days restriction.

h. On 19 January 1968, for being AWOL, from on or about 16 January 1968 until on or about 17 January 1968. His punishment consisted of 14 days of extra duty and 14 days restriction.

5. A Medical Officer's Statement, dated 1 February 1968, and associated documents show the applicant underwent a psychiatric evaluation and a separation medical examination. He reported being in good health and was found medically qualified for separation. He was also determined to be mentally responsible and capable of participating in board proceedings.

6. On 15 February 1968, the applicant acknowledged understanding that he was being transferred from H Troop to F Troop for rehabilitative purposes.

7. The applicant was notified on 16 February 1968 of his commander's intent to initiate separation action against him under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), by reason of frequent incidents of a discreditable nature with military authorities.

8. The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ on 18 April 1968, for failure to go at the time prescribed to his appointed place of duty, on or about 15 April 1968, and for being AWOL, on or about 16 April 1968. His punishment consisted of 14 days restriction, 14 days of extra duty, and reduction to private/E-1.

9. On 20 May 1968, the applicant acknowledged receipt of his commander's notification of separation. He was counseled for the contemplated separation action, its effects, and the rights available to him. He requested a personal appearance, representation by counsel, and consideration of his case before a board of officers. He acknowledged understanding he may expect to encounter substantial prejudice in civilian life in the event of a general discharge, and he may be ineligible for many or all benefits as a Veteran under both Federal and State laws as a result of a UOTHC discharge. He elected not to submit statements in his own behalf.

10. Before a special court-martial, at Warner Barracks, Bamberg, Germany, on 3 June 1968, the applicant pled guilty to and was found guilty of violating a lawful general regulation by having two ration cards in his possession and for stealing property, of a value of about \$22.73, from the Post Exchange, on or about 18 May 1968. His sentence consisted of confinement at hard labor for five months, forfeiture of \$75.00 pay per month for six months. The sentence was approved and ordered duly executed on 6 July 1968. Subsequently, the unexecuted portion of the sentence to confinement at hard labor for five months was suspended for three months.

11. On 19 July 1968, the applicant's immediate commander recommended the applicant appear before a board of officers for the purpose of determining whether he should be discharged prior to the expiration of his term of service, under the provisions of Army Regulation 635-212. The commander further stated, [the applicant] was assigned to both H Troop and F Troop, under various superior officers and noncommissioned officers, and consistently showed unsatisfactory behavior.

12. The applicant's intermediate chain of command reviewed and concurred with the recommended separation action, further recommending the issuance of an undesirable discharge certificate.

13. On 7 August 1968, the applicant was directed to appear before a board of officers. On the day of the board hearing, the applicant elected to waive his appearance before the board and elected not to submit a statement in his own behalf.

14. On 5 September 1968, the applicant's intermediate commander recommended approval of the applicant's discharge for unfitness, further recommending the issuance of an undesirable discharge certificate.

15. The separation authority approved the recommended separation action on 20 October 1968 and directed the issuance of a DD Form 258A (Undesirable Discharge Certificate).

16. The applicant was discharged on 13 November 1968, under the provisions of Army Regulation 635-212, with separation program number 28B and reenlistment code RE-4, 3B. His DD Form 214 shows his service was characterized as UOTHC. He completed 2 years and 8 months of net active service this period, with lost time from 3 June 1968 to 6 August 1968.

17. The Army Discharge Review Board (ADRB) considered the applicant's request for an upgrade of his service characterization on or about 1 March 1982. After careful consideration, the Board determined the applicant was properly discharged and denied his request for relief.

18. The applicant provides a letter from the VA, dated 6 December 2023, which shows that his period of military service from 10 January 1966 through 13 November 1968 was determined to be dishonorable for VA purposes. The VA further noted that although the applicant and his dependents were ineligible for VA benefits for this period, the applicant may be eligible for treatment at a VA hospital for any condition determined to be related to his military service.

19. In the processing of this case, on 3 October 2024, the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no Sexual Assault or Domestic Violence records pertaining to the applicant.

20. Army Regulation 635-212, in effect at the time, stated that an individual was subject to separation when it was clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort was unlikely to succeed.

21. The Board should consider the applicant's statement in accordance with the published equity, injustice, or clemency determination guidance.

22. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) character of service to under honorable conditions (general). He selected MST on his application 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 enlisted in the Regular Army on 10 January 1966.

- The applicant accepted nonjudicial punishment under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) on eight occasions:
- On 18 July 1966, for failure to obey a lawful order, on or about 15 July 1966. His punishment consisted of 14 days restriction, 14 days of extra duty, and forfeiture of \$25.00 pay.
- On 3 September 1966, for damaging the walls of the billets and the room number signs, military property of the United States, on or about 25 August 1966, and for breaking restriction, on or about 27 August 1966. His punishment consisted of 45 days of extra duty and 45 days restriction.
- On 25 October 1966, for willfully disobeying a lawful order and for being derelict in his duty while on guard duty, on or about 24 October 1966. His punishment consisted of 14 days restriction, 14 days of extra duty, and forfeiture of \$10.00 pay.
- On 24 July 1967, for being absent without authority (AWOL), from on or about 19 July 1967 until on or about 20 July 1967. His punishment consisted of seven days of extra duty, seven days restriction, and forfeiture of \$12.00 pay.
- On 11 August 1967, for feigning a dental illness to avoid duty, on or about 9 August 1967. His punishment consisted of 14 days of extra duty, 14 days restriction, forfeiture of \$19.00 pay, and reduction to private/E-2.
- On 15 December 1967, for being AWOL, on or about 3 December 1967. His punishment consisted of 14 days of extra duty, 14 days restriction, and forfeiture of \$14.00 pay.
- On 10 January 1968, for being AWOL, from on or about 25 December 1967 until on or about 26 December 1967. His punishment consisted of reduction to private/E-1, forfeiture of \$60.00 per month for two months, 45 days of extra duty, and 45 days restriction.
- On 19 January 1968, for being AWOL, from on or about 16 January 1968 until on or about 17 January 1968. His punishment consisted of 14 days of extra duty and 14 days restriction.
- The applicant was notified on 16 February 1968 of his commander's intent to initiate separation action against him under the provisions of Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), by reason of frequent incidents of a discreditable nature with military authorities.
- The applicant accepted nonjudicial punishment under the provisions of Article 15 of the UCMJ on 18 April 1968, for failure to go at the time prescribed to his appointed place of duty, on or about 15 April 1968, and for being AWOL, on or about 16 April 1968.
- Before a special court-martial, at Warner Barracks, Bamberg, Germany, on 3 June 1968, the applicant pled guilty to and was found guilty of violating a lawful general regulation by having two ration cards in his possession and for stealing property, of a value of about \$22.73, from the Post Exchange, on or about 18 May 1968.

- On 7 August 1968, the applicant was directed to appear before a board of officers. On the day of the board hearing, the applicant elected to waive his appearance before the board and elected not to submit a statement in his own behalf.
- The applicant was discharged on 13 November 1968, under the provisions of Army Regulation 635-212, with separation program number 28B and reenlistment code RE-4, 3B. His DD Form 214 shows his service was characterized as UOTHC. He completed 2 years and 8 months of net active service this period, with lost time from 3 June 1968 to 6 August 1968.

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 was sexually assaulted while he was in the military, which contributed to his receiving a UOTHC discharge. He is presently being treated for military sexual trauma (MST). He suffers from mental health conditions and other conditions related to his military service for which he would like to file a compensation claim. However, the applicant does not provide any indication/details regarding the nature of the assault, what occurred, by whom, nor does he provide possible dates or timeframe.

d. Due to the period of service no active-duty electronic medical records were available for review. A psychiatric evaluation dated 27 January 1968, provides a history of the applicant's childhood and his difficulty adjusting to military service. The report notes no psychiatric disorder and cleared him for any action deemed appropriate by Command.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The electronic medical record shows that contrary to the applicant's statement of being treated for MST, there is no evidence in the electronic medical record that he is being treated for MST and he provided no medical documentation supporting his statement. In fact, the record shows the applicant has repeatedly attempted to access VA services but is ineligible. The applicant initially had contact with the VA related to housing, on 4 May 2023, the note states "he is currently housed and initially gave this writer mixed messages, initially stating he was at SETLC then stated he was renting a room; therefore, is not homeless. Veteran reports he is required to register as a lifetime sex offender. Due to this, veteran does not qualify for HUDVASH nor GPD." The applicant apparently attempted to access VA homeless services following his release from a lengthy incarceration but was unable to access those services due to being a registered sex offender. In the processing of this case, on 3 October 2024, the U.S. Army Criminal Investigation Division, searched their criminal file indexes, which revealed no Sexual Assault or Domestic Violence records pertaining to the applicant.

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 mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts experiencing MST.

(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 no 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. In addition, the applicant provides no details regarding his assertion of MST. Contrary to the applicant's statement of being treated for MST, there is no evidence in the electronic medical record that he is being treated for MST and he provided no medical documentation supporting his statement. In fact, the record shows the applicant has repeatedly attempted to access VA services but is ineligible. The applicant apparently initially attempted to access VA homeless services following his release from a lengthy incarceration but was unable to access those services due to being a lifetime registered sex offender.

h. Per Liberal Consideration guidelines, the applicant's assertion of MST is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the short term of honorable service completed prior to a pattern of misconduct leading to the applicant's separation and the lack of any mitigation found by the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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.

12/27/2024

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. Title 10, U.S. Code (USC), 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 Army Board for Correction of Military Records (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, USC, 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 ABCMR 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 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), then in effect, provided the criteria governing the issuance of honorable, general, and undesirable discharge certificates.

a. Paragraph 1-9d provided that an honorable discharge was a separation with honor and entitled the recipient to benefits provided by law. The honorable characterization was appropriate when the quality of the member's service generally had met the standards of acceptable conduct and performance of duty for Army personnel or was otherwise so meritorious that any other characterization would be clearly inappropriate.

b. Paragraph 1-9e provided that a general discharge was a separation from the Army under honorable conditions. When authorized, it was issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

5. Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), then in effect, provided the policy and procedures for administrative separation of enlisted personnel for unfitness and unsuitability. It provided that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. This regulation also prescribed that an undesirable discharge was normally issued.

6. 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. Boards are 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 misconduct that led to the discharge.

7. 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//