

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 November 2024

DOCKET NUMBER: AR20200008273

APPLICANT REQUESTS: reconsideration for his request for an upgrade of his discharge under other than honorable conditions (UOTHC) to an uncharacterized discharge and to appear before the Board at no expense to the government.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Self-authored statement
- Army Board for Correction of Military Records (ABCMR) letter
- Character reference statement
- Police Accident Report
- Certificate of Death

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the ABCMR in Docket Number AR20200008273 on 31 March 2021.

2. The applicant previously states he would like to apologize for his conduct in the Armed Forces. His service was inferior and incomplete, and he accepts those as facts. He believes he has grown stronger as a man of integrity and character much beyond the selfish youth that joined the Army to avoid a broken home. As new evidence he provides documents that reflect the family strife that he was dealing with back home during his time in service. His stepfather was involved in a terrible car accident which took his life while off duty as a state police officer in Massachusetts. His mother was distraught over the loss, and it put an immense strain on the family and his ability to serve. He is available to have this heard in-person. He has great respect for the Board members' service and attention to this matter. He seeks clemency because he was under great distress at the time of his separation.

3. On 20 August 1998, the applicant enlisted in the Regular Army in the rank/grade of private (PV1)/E-1 for a period of 4 years. Upon completion of initial entry training, he

was assigned to a unit at Schofield Barracks, HI. He was advanced to private (PV2)/E-2 on 20 April 1999, the highest rank he held.

4. Changes to the applicant's duty status were reported as follows:

- from Present for Duty (PDY) to Absent Without Leave (AWOL) effective 27 April 1999
- from AWOL to Dropped from Rolls (DFR) and reported as a deserter effective 27 May 1999
- from DFR to Attached/PDY effective 15 July 1999 when he surrendered to military authorities at Fort Knox, KY
- from PDY to AWOL effective 23 July 1999
- from AWOL to DFR effective 24 July 1999

5. A Special Processing Company, Personnel Control Facility, Fort Knox, KY memorandum, Subject: Admission of AWOL for Administrative Purposes, shows the applicant knowingly, willingly, and voluntarily declared that he was AWOL from on or about 27 April 1999 to on or about 15 July 1999 and from on or about 23 July 1999 to on or about 7 November 1999.

6. A DD Form 458 (Charge Sheet) shows on 13 December 1999, court-martial charges were preferred against the applicant and referred to a Court-Martial for his violation of the Uniform Code of Military Justice (UCMJ) by, being AWOL from his organization from on or about 27 April 1999 to on or about 15 July 1999 and from on or about 23 July 1999 to on or about 7 November 1999.

7. On 13 December 1999, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, for the good of the service in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him. He elected not to provide a statement in his own behalf.

8. On 22 September 2000, the applicant's immediate commander recommended approval of his request for discharge with his service characterized as UOTHC.

9. On 19 December 2000, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He directed his service be characterized as UOTHC, and further directed that the applicant be reduced to the lowest enlisted grade.

10. The applicant was reduced from PV2/E-2 to PV1/E-1 on 9 December 1999.

11. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged on 29 January 2001, in the grade of E-1, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial by Court-Martial" with Separation Program Designator code "KFS" and Reentry code "4." He was credited with completing 1 year, 11 months, and 4 days of net active service this period. He had time lost from 27 April 1999 to 14 July 1999 and from 23 July 1999 to 6 November 1999. He did not complete his first full term of service.

12. On 13 September 2004, the applicant petitioned the Army Discharge Review Board (ADRB) for relief. On 6 May 2005, the applicant was informed that after careful review of his application, military records, and all other available evidence, the ADRB determined that he was properly and equitably discharged and denied his request.

13. The applicant petitioned the ABCMR for an upgrade of his discharge. On 27 October 2021, the applicant was informed the ABCMR had considered his application under procedures established by the Secretary of the Army and denied his application.

14. The applicant provides the following documents which are available in their entirety for the Board's consideration:

a. A copy of the ABCMR letter, dated 27 October 2021, wherein he was informed the ABCMR had denied his petition.

b. A character reference statement rendered by a friend who made favorable comments about the applicant's mentorship, helpfulness, honesty, and work on the artistic community in their city.

c. A Police Accident Report and a Certificate of Death which shows DPJ was involved in a fatal automobile accident on 23 July 1997; a year prior to his enlistment.

15. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

16. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. By regulation, an applicant is not entitled to a hearing before the Board.

17. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting reconsideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to uncharacterized. He contends he experienced an undiagnosed mental health condition, including PTSD, that mitigates his misconduct.

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 into the Regular Army on 20 August 1998.
- A Charge Sheet shows on 13 December 1999 court-martial charges were preferred against the applicant for his violation of the UCMJ by being AWOL from his organization from 27 April 1999 to 15 July 1999 and from 23 July 1999 to 7 November 1999. The applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial.
- The applicant was discharged on 29 January 2001 and was credited with completing 1 year, 11 months, and 4 days of net active service.

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 asserts that his stepfather was killed in a tragic car accident, and this put a significant strain on his mother and family. The application included a police report and death certificate dated 23 July 1997, but there were no medical or mental health records included. There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed no history of mental health related treatment or diagnoses.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts he had an undiagnosed mental health condition at the time of the misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service, and there were no records included in the application. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, the applicant contends he had a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

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 record of service, documents submitted in support of the request and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's request, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of going AWOL on two occasions.

2. The Board noted the applicant's character letter of support attesting to his integrity and community involvement and mentorship. The Board weighed the circumstances surrounding the applicant's discharge. However, the applicant agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to an uncharacterized. Therefore, the Board denied relief.

3. The applicant did not meet the criteria for an uncharacterized discharge. Per regulatory guidance, Soldiers are authorized and honorable discharge while in entry-level status only if they complete their active-duty schooling and earn their MOS. That is not the case here. The applicant awarded the MOS 11B (Infantryman) as was discharged on 29 January 2001, in the grade of E-1, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial by Court-Martial. Furthermore, 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board found 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 to amend the decision of the ABCMR set forth in Docket Number AR20200008273 on 31 March 2021.

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X//Signed//

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, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Title 10, U.S. Code, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications,

with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

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. 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, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.

b. 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.

c. 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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

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 Service Discharge Review Boards (DRB) and Service 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 (PTSD); 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.

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, 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.

//NOTHING FOLLOWS//