

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 December 2024

DOCKET NUMBER: AR20240003366

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to under honorable conditions (General).

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Applicant Statement
- DD Form 214 (Certificate of Release or Discharge from Active Duty), for the period ending 23 March 1982
- Letter from the Department of Veterans Affairs (VA), 18 January 2024

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 the letter he received from the VA on 18 January 2024 states his service from 31 January 1981 through 23 March 1982 is considered dishonorable for VA purposes. These are conflicting conditions from what was given to him at his discharge. At the time of his discharge, his physical and mental health was taking a toll on his body, and he spoke with his commanding officer trying to receive help and to let him know what was going on, but he never received help. This is what led to the unauthorized absences.
3. The applicant provides a letter from the VA, dated 18 January 2024, which shows the VA decided his service for the period of 31 January 1978 through 30 January 1981 is honorable for VA purposes. The VA also decided that his military service for the period of 31 January 1981 through 23 March 1982 is dishonorable for VA purposes.

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

- a. The applicant enlisted in the Regular Army on 31 January 1978.
- b. The applicant was discharged on 30 July 1980 for the purpose of immediate reenlistment. He reenlisted on 31 July 1980 for a period of 4 years in pay grade E-4.
- c. On 27 February 1981, he accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), for on or about 2 February 1981, altering a DD Form 689 (Individual Sick Slip) by writing 72 hours in the remarks section, such a statement known by the applicant to be false and fraudulent. His punishment included reduction to private first class (PFC)/E-3, forfeiture of \$149.00 per month for one month (suspended 30 days), and 14 days of extra duty.
- d. His duty status changed on the following dates:
 - Present for Duty (PDY) to Absent Without Leave (AWOL) – 27 April 1981
 - AWOL to PDY – 30 April 1981
 - PDY to AWOL – 4 May 1981
 - AWOL to PDY – 2 June 1981
 - PDY to AWOL – 9 June 1981
 - AWOL to PDY – 30 June 1981
 - PDY to AWOL – 14 August 1981
 - AWOL to Dropped from Rolls (DFR) – 14 September 1981
 - DFR to PDY – 19 January 1982
- e. Court-martial charges were preferred against the applicant on 2 February 1982. His DD Form 458 (Charge Sheet) shows he was charged with being AWOL from on or about 14 August 1981 to on or about 19 January 1982.
- f. On 2 February 1982, after consulting with legal counsel, the applicant voluntarily requested discharge for the good of the service in lieu of trial by court-martial, under Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), chapter 10. The applicant acknowledged that he made the request of his own free will and was not coerced by any person. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charges against him or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veteran's Administration, he could be deprived of his rights and benefits as a veteran under both Federal and State law and encounter substantial prejudice in civilian life because of an under other than honorable discharge.

g. The applicant underwent a mental status evaluation on 3 February 1982. The doctor did not note any mental issues and found he had the mental capacity to participate in his separation proceedings.

h. The immediate commander conducted an interview with the applicant on 5 February 1982, and the applicant stated his AWOL was caused by family problems. He stated his son needed to be taken to Fort Gordon for a hernia operation. He went on to say that he departed AWOL when he was denied leave to accompany his son. In addition, when he arrived at home, his wife had filed for divorce because of the separation necessitated by his duties and time spent in the field. He stated that he was despondent and simply remained in an AWOL status. He was empathetic in his statement that he had no desire to remain in the Army. The commander noted that in view of the applicant's attitude toward the military, and his lack of rehabilitative potential, he recommended discharge under other than honorable conditions. The intermediate commander echoed this recommendation.

i. The separation authority approved the recommended discharge on 5 March 1982, directed the applicant be reduced to the lowest enlisted grade unless already serving in that grade, and be issued an under other than honorable conditions discharge.

j. The applicant was discharged on 23 March 1982. His DD Form 214 shows he was discharged under the provisions of AR 635-200, chapter 10, in the rank grade of private/E-1, and his service was characterized as under other than honorable conditions. He completed 3 years, 6 months, and 25 days of active service during the covered period. This form also shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Marksman Marksmanship Qualification Badge (M-16 rifle)
- Item 26 (Separation Code): JFS
- Item 27 (Reenlistment Code): 3;3B
- Item 29 (Dates of Time Lost During This Period): 27 April 1981 – 29 April 1981; 4 May 1981 – 1 June 1981; 9 June 1981 – 29 June 1981; 14 August 1981 – 18 January 1982

5. On 2 October 2024, the Director, Case Management Division, sent a letter to the applicant requesting that he provide a copy of his military medical record and any other medical documents that support his stated issues (physical and mental); however, he did not respond.

6. The pertinent Army regulation in effect at the time provided discharges under the provision of AR 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

7. There is no indication the applicant applied to the Army Discharge Review Board for review of his discharge processing within that board's 15-year statute of limitations.
8. The Board should consider the applicant's statement and overall record in accordance with the published equity, injustice, or clemency determination guidance.

MEDICAL REVIEW:

1. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the supporting documents, the Record of Proceedings (ROP), and the applicant's available records in the Interactive Personnel Electronic Records Management System (iPERMS), the Health Artifacts Image Management Solutions (HAIMS) and the VA's Joint Legacy Viewer (JLV). The applicant requests a discharge change from Under Other Than Honorable Conditions to Under Honorable Conditions, General.
2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant entered active service in the Regular Army 31Jan1978. His MOS was Heavy Antiarmor Weapons Crewman and Infantryman. His DD Form 214 did not show foreign service. He was discharged 23Mar1982 under provisions of AR 635-200 chapter 10 for conduct triable by court-martial. His charge sheet contained one specification of being absent without leave from 14Aug1981 to 19Jan1982.
3. During his current ABCMR application, he stated that at the time of his discharge he had physical and mental issues. During separation proceedings, he reportedly stated that he went AWOL due to family problems and remained so due to feeling despondent. Specific family issues mentioned were his son's hernia operation and his wife filed for divorce. During the 03Feb1982 Report of Mental Status Evaluation Report (DA Form 3822), his behavior mood, affect, thought process/content and memory were within normal limits. He was mentally responsible, and he had the mental capacity to understand and participate in separation proceedings. He was not diagnosed with a mental health condition. He met retention standards of AR 40-501 chapter 3.
4. JLV search showed he has received treatment at VA community partners for heart disease, dyslipidemia, hypertension, and orthopedic issues (back, neck, right knee, and left foot). He was working as a mechanic. JLV search also revealed that he was not service connected by the VA for any disabilities likely due to the characterization of his military service. Liberal Consideration policy was considered; however, the applicant's record did not show that he had a formally diagnosed mental health condition.
5. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. Under Liberal Consideration, the applicant's claim that mental health issues contributed to the reason for his discharge is sufficient for consideration to be mitigating.

(2) Did the condition exist, or did the experience occur during military service? Yes. Under Liberal Consideration, the applicant's claim of mental health issues while in service is sufficient.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Although review of the records was void of any formal BH diagnosis or treatment for such during or after service, separation paperwork did document that the applicant reported that family issues contributed to his going AWOL and despondency contributed to his remaining so. Under Liberal Consideration, his contention is sufficient for the Board's consideration.

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 being absent without leave, 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 a mental health condition and reviewed the medical advisor's review; however, found no error or injustice in the applicant's characterization of service upon discharge. Based on a preponderance of the evidence, the Board concluded relief was not warranted.

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.

■

■

■

■

■

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 NOTE(S): A review of the applicant's records show his DD Form 214 omitted administrative entries in the remarks block. As a result, amend item 18 by adding the entry "Continuous honorable service from 19780131 to 19800730."

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 (AR) 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 provided that a Soldier who 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. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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

3. Army Regulation 635-5-1 (Personnel Separations - Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 10, with a narrative reason "Administrative discharge conduct triable by court-martial" would receive a separation code of JFS.

4. Army Regulation 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification.
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

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 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.

6. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

7. 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.

8. AR 635-8 (Separations Processing and Documents), currently in effect, provides for the preparation and distribution of the DD Form 214. It states for item 18 (Remarks) for Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable," enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).

//NOTHING FOLLOWS//