

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 November 2024

DOCKET NUMBER: AR20240003682

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge. Also, correction of his DD Form 214 (Certificate of Release or Discharge from Active Duty) to show in Item 1 (Name – Last) to reflect C\_\_E vice C\_\_K.

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

- DD Form 149 (Application for Correction of Military Record)
- Email

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 at Leed, MA VA hospital for a period of six months for drug and alcohol treatment and mental health issues. There was an attached note with prior application. In an email he states his last name is C\_\_e not C\_\_k.
3. The applicant enlisted in the Regular Army on 1 August 1978. He extended his enlistment on 18 July 1980 for four months. He reenlisted for a period of 4 years on 1 August 1981.
4. He received non-judicial punishment (NJP) under Uniform Code of Military Justice (UCMJ) on 12 May 1982, for on or about 17 April 1982, without authority, failing to go at the time prescribed to his appointed place of duty.
5. He received NJP under UCMJ on 15 September 1982, for on or about 7 September 1982, without authority, failing to go at the time prescribed to his appointed place of duty.

6. His records contains of several DA Form 4187s (Personnel Action) which shows his duty status was changed from:

- Present for duty (PDY) to absent without leave (AWOL) on 7 October 1982
- AWOL to PDY on 12 October 1982

7. He received NJP under UCMJ for on or about 6 October 1982, without authority, absent himself from his unit, and did remain so absent until on or about 12 October 1982. His punishment included reduction to specialist (E-4). He appealed the punishment, and on 2 December 1982, the next higher commander determined the proceedings were conducted in accordance with law and regulation and the punishment imposed was neither unjust nor disproportionate to the offense committed.

8. His records contains several other DA Form 4187s which shows his duty status was changed from:

- PDY to AWOL on 12 September 1983
- AWOL to PDY on 15 September 1983
- PDY to AWOL on 6 October 1983
- AWOL to PDY on 26 October 1983
- PDY to AWOL on 27 October 1983
- AWOL to PDY on 1 November 1983

9. He received NJP under UCMJ on 8 November 1983, for:

- On or about 12 September 1983, without authority, absent himself from his unit, and did remain so absent until on or about 15 September 1983
- On or about 6 October 1983, without authority, absent himself from his unit, and did remain so absent until on or about 26 October 1983
- On or about 27 October 1983, without authority, absent himself from his unit, and did remain so absent until on or about 1 November 1983
- His punishment included reduction to private (E-1)

10. His records contains other DA Form 4187s which shows his duty status was changed from:

- PDY to AWOL on 15 November 1983
- AWOL to PDY on 28 December 1983
- PDY to AWOL on 4 January 1984

11. He received NJP under UCMJ on 9 January 1984, for on or about 15 November 1983, without authority, absent himself from his unit, and did remain so absent until on

or about 28 December 1983. The applicant was AWOL effective 3 January 1984 through the date of imposition.

12. His records contains other DA Form 4187s which shows his duty status was changed from:

- AWOL to PDY on 13 January 1984
- PDY to AWOL on 14 January 1984
- AWOL to Dropped from the Rolls (DFR) on 19 January 1984
- DFR to PDY on 19 January 1984 on 19 January 1984

13. He received NJP under UCMJ on 3 February 1984, for on or about 4 January 1984, without authority, absent himself from his unit, and did remain so absent until on or about 13 January 1984 and from on or about 14 January to on or about 19 January 1984.

14. His records contains other DA Form 4187s which shows his duty status was changed from:

- PDY to Hospital (HOS) on 12 February 1984 (Admitted to Womack Army Hospital Ward 6B)
- HOS to Convalescent Leave (CLV) on 23 February 1984
- CLV to HOS on 14 March 1984
- HOS to PDY on 20 March 1984

15. The applicant's record is void of the separation packet that led to his separation. However, his service record contains a DD Form 214 that shows he was discharged under other than honorable conditions on 3 July 1984. His DD Form 214 shows he completed 5 years, 8 months, and 3 days net active service this period. It also shows:

- Item 25 (Separation Authority): Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 14-12b, Section III
- Item 26 (Separation Code): JKM
- Item 27 (Reenlistment Code): 3; 3B
- Item 28 (Narrative Reason for Separation): Misconduct – Pattern of Misconduct
- Item 29 (Date of Time Lost During this Period): 821007 – 821011; 830912 – 830914; 831006 – 831025; 831027 – 831031; 831115 – 831227; 840104 – 840112; and 840114 – 840118.

16. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that ADRB's 15-year statute of limitations.

17. By regulation, AR 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service.

18. In reaching its determination, the Board can consider the applicant's petition and his service record in accordance with the published equity, injustice, or clemency determination guidance.

19. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge. He contends he experienced mental health conditions including PTSD that mitigates his misconduct. 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: 1) The applicant enlisted in the Regular Army on 1 August 1978; 2) The applicant received non-judicial punishments (NJPs) on multiple occasions for being AWOL or not being at his place of duty between 17 April 1982-3 February 1984; 3) The applicant's service record is void of his separation packet; 4) The applicant was discharged on 3 July 1984, Chapter 14-12b, Misconduct – Pattern of Misconduct. His characterization of service was determined to be under other than honorable conditions.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service records. The VA's Joint Legacy Viewer (JLV) was also examined.

c. The applicant asserts he experienced mental health conditions including PTSD that mitigate his misconduct while on active service. There is evidence the applicant was admitted to a military hospital from 12-23 February 1984, then went on convalescent leave, and then was admitted back into to the hospital from 14-20 March 1984. There is insufficient evidence to the reason for his hospital stay in the available records.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition including PTSD. He was seen by the VA for treatment for poly-substance abuse/dependence and assistance for homelessness starting in 1993. He has been diagnosed with mental health conditions, and in 2024, he was diagnosed with PTSD, but it was not determined to be service connected. The applicant does not currently receive any service-connected disability for a mental health condition including PTSD.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence beyond self-report the applicant was experiencing mental health conditions including PTSD while on active service. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of his mental health condition or experience.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No. There is insufficient evidence beyond self-report the applicant was experiencing mental health conditions including PTSD while on active service. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of his mental health condition or experience. However, the applicant contends he experienced mental health condition while on active service, which mitigates his misconduct and discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that partial relief was warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition 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 reviewing the applicant's petition, military records, and medical evaluation, the Board concurred with the Agency Medical Advisor's opinion that there is insufficient evidence beyond self-reporting to substantiate that the applicant experienced mental health conditions, including PTSD, while on active duty. Additionally, there is insufficient documentation surrounding the events leading to the applicant's discharge, making it impossible to assess whether his mental health condition or experiences may have mitigated his misconduct.

Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? No. There is insufficient evidence beyond self-report the applicant was experiencing mental health conditions including PTSD while on active service. In addition, there is insufficient evidence surrounding the events which resulted in the applicant's discharge to provide an appropriate opinion on possible mitigation as the result of his mental health condition or experience. However, the applicant contends he experienced mental health condition while on active service, which mitigates his misconduct and discharge. The applicant's contention alone is sufficient for consideration per the Liberal Consideration Policy.

(2) Did the condition exist or experience occur during military service? N/A.

(3) Does the condition experience actually excuse or mitigate the misconduct? N/A.

2. The Board further noted that the applicant did not provide post-service achievements or character references that could attest to honorable conduct, which might have supported a clemency determination. Moreover, the Board found no sufficient in-service mitigating factors to offset the multiple instances of AWOL and the established pattern of misconduct. Based on a preponderance of evidence, the Board concluded that the character of service assigned at separation was neither erroneous nor unjust. However, during deliberation, the Board acknowledged that the applicant had a prior period of honorable service that is not currently reflected on his DD Form 214. To ensure accuracy in his military record, the Board recommended a partial upgrade to properly document this period of honorable service.

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

:	:	:	GRANT FULL RELIEF
XX	XXX	XXX	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

1. The Board determined the evidence presented is sufficient to warrant a recommendation for partial relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 3 July 1984 by adding the following entries in item 18 (Remarks): "Continuous Honorable Service 19780801 to 19810731."

2. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains an upgrade of his under other than honorable conditions discharge.

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):

- The applicant's records contain sufficient evidence to support a correction of his name on his DD Form 214 for the period ending 3 July 1984, therefore it will be administratively corrected without Board action to show his last name as C\_E vice C\_K.

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) sets forth the basic authority for the separation of enlisted personnel. Chapter 14 (Separation

for Misconduct) deals with separation for various types of misconduct, which includes drug abuse, and states that individuals identified as drug abusers may be separated prior to their normal expiration of term of service. The regulation in effect at the time stated individuals in pay grades E-5 and above could be processed for separation upon discovery of a drug offense. Those in pay grades below E-5 could also be processed after a first drug offense and must have been processed for separation after a second offense. The issuance of a discharge under other than honorable conditions was normally considered appropriate.

a. Paragraph 3-7a (1) states an honorable discharge is a separation with honor. 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. Only the honorable characterization may be awarded a member upon completion of his or her period of enlistment or period for which called or ordered to active duty or active duty for training, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted.

b. Paragraph 3-7b (1) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Paragraph 3-7b (2) states a characterization of under honorable conditions may be issued only when the reason for the member's separation specifically allows such characterization. It will not be issued to members upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

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 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.

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//