

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 11 June 2025

DOCKET NUMBER: AR20240003749

APPLICANT REQUESTS: request his under other than honorable discharge be upgraded to honorable

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

- DD Form 149 (Application for Correction of Military Record)
- Orders 146-26
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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 is requesting an upgrade to receive military veteran benefits. He was with 1st Cav Div Horse Platoon out of Fort Hood, TX for over two years. He traveled with the team and horses to fairs, parades, and rodeos throughout the U.S. He was also in President Ronald Reagan's Inaugural parade in 1986.
3. The applicant enlisted in the Regular Army on 22 September 1983 for a period of three years.
4. He received non-judicial punishment (NJP) under the Uniform Code of Military Justice (UCMJ) between 6 November 1985 and 5 December 1985, for wrongfully using marijuana. The sentence consisted of reduction to the pay grade of Private First Class/E-3; forfeiture of \$100 per month for two months (suspended for 90 days); and extra duty for 30 days.

5. The sentence was vacated due to on or about 12 February 1986, without authority the applicant failed to go to his appointed place of duty. The forfeiture of \$100 per month for two months was imposed.

6. On 31 March 1986, the applicant's duty status was changed from present for duty (PDY) to absent without leave (AWOL). On 29 April 1986, his duty status was changed from AWOL to dropped from the rolls (DFR). On 7 May 1986, his duty status was changed from DFR to PDY.

7. On 15 May 1986, court martial charges were preferred against the applicant for being AWOL from on or about 31 March 1986 until on or about 7 May 1986.

8. On 16 May 1986, after consulting with 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 (Discharge for the Good of the service), In his request, he affirmed no one subjected him to coercion and counsel had advised him of the implications of his request. He understood that if his request for discharge is accepted, he may be discharged under conditions other than honorable and furnished an Under Other Than Honorable Discharge Certificate (UOTHC). He was advised and understood the possible effects of an UOTHC discharge. He also understood:

- 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 Veterans Administration, and he could be deprived of his rights and benefits as a veteran under both Federal and State laws
- he may expect to encounter substantial prejudice in civilian life because of an Under Other than Honorable Discharge
- he was advised he could submit any statements he desired on his own behalf; he elected not to submit a statement

9. The applicant's chain of command recommend approval of the applicant's request for discharge with an Other Than Honorable Discharge Certificate be issued.

10. On 7 July 1986, the Separation Authority approved the applicant's request for discharge and directed he be reduced to the rank of Private/E-1, and an Other Than Honorable Discharge Certificate be furnished.

11. Accordingly, on 1 August 1986, the applicant was discharged under the provisions of AR 635-200, Chapter 10. His DD Form 214 shows he completed 2 years, 9 months, 4 days of net active service this period. He had lost time from 31 March 1986 to 6 May 1986. His DD Form 214 also shows:

- Item 24 (Character of Service): under other than honorable conditions
- Item 26 (Separation Code): KFS
- Item 27 (Reenlistment Code): RE-3B, 3
- Item 28 (Narrative Reason for Separation): For the Good of the Service – In Lieu of Court-Martial

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

13. The applicant provides:

a. Transition orders 146-26 which reflect the applicant was to be discharged on 1 August 1986.

b. DD Form 214 (Certificate of Release or Discharge from Active Duty)

14. By regulation, (AR 635-200) sets forth the basic authority for the separation of enlisted personnel. Chapter 10 of that regulation provides, in pertinent part, 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.

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

#### 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 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 review of the applicant's petition and available military records, the Board determined that insufficient evidence exists to support in-service mitigating factors that would warrant relief from the misconduct of absence without leave (AWOL). Additionally, the applicant did not provide post-service achievements or character letters for consideration for a clemency determination.

2. Records indicate that the applicant accepted separation under Chapter 10 and completed 2 years, 9 months, and 4 days of net active service. The applicant also had lost time from 31 March 1986 to 6 May 1986. Based on the preponderance of evidence, the Board found no error or injustice that would merit an upgrade of the under other than honorable conditions (UOTHC) discharge to honorable. Based on this, relief is denied.

BOARD VOTE:

Mbr 1      Mbr 2      Mbr 3

|     |     |    |                      |
|-----|-----|----|----------------------|
| :   | :   | :  | GRANT FULL RELIEF    |
| :   | :   | :  | GRANT PARTIAL RELIEF |
| :   | :   | :  | GRANT FORMAL HEARING |
| XXX | XXX | XX | 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.

**//SIGNED//**

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 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.

a. 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. 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. 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.

d. Chapter 10 provides, in pertinent part, that a member who has committed an offense or offenses for which the authorized punishment includes a punitive discharge may submit a request for a 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. Army policy states that although an honorable or general, under honorable conditions discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

3. 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.

4. The Acting Principal Deputy Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 24 February 2016 [Carson Memorandum]. The memorandum directed the BCM/NRs to waive the statute of limitations. Fairness and equity demand, in cases of such magnitude that a Veteran's petition receives full and fair review, even if brought outside of the time limit. Similarly, cases considered previously, either by DRBs or BCM/NRs, but without benefit of the application of the Supplemental Guidance, shall be, upon petition, granted de novo review utilizing the Supplemental Guidance.

5. The Under Secretary of Defense (Personnel and Readiness) provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017 [Kurta Memorandum]. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, traumatic brain injury (TBI), sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on 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.

a. Guidance documents are not limited to under other than honorable conditions discharge characterizations but rather apply to any petition seeking discharge relief including requests to change the narrative reason, re-enlistment codes, and upgrades from general to honorable characterizations.

b. An honorable discharge characterization does not require flawless military service. Many veterans are separated with an honorable characterization despite some relatively minor or infrequent misconduct.

c. Liberal consideration does not mandate an upgrade. Relief may be appropriate, however, for minor misconduct commonly associated with mental health conditions, including PTSD; TBI; or behaviors commonly associated with sexual assault or sexual harassment; and some significant misconduct sufficiently justified or outweighed by the facts and circumstances.

6. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards 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. 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.

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.

//NOTHING FOLLOWS//