

IN THE CASE OF: [REDACTED]

BOARD DATE: 13 December 2024

DOCKET NUMBER: AR20240003756

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 2 February 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 does not submit a statement; however, on his DD Form 293 he annotates post-traumatic stress disorder (PTSD) and other mental health are related to his request.
3. The applicant was inducted in the Army of the United States on 25 March 1968, for a 2-year period. The highest rank he attained was private/E-1. He was not awarded a military occupational specialty.
4. On 22 July 1968, he accepted nonjudicial punishment, under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for behaving with disrespect towards his superior officer by speaking in a sarcastic manner on or about 19 July 1968. His punishment imposed was forfeiture of \$23.00 for one month and 14 days of restriction.
5. Court-martial charges were preferred against the applicant for violation of the UCMJ on 7 March 1970. The relevant DD Form 458 (Charge Sheet) shows he was charged with going absent without leave (AWOL) on or about 26 September 1968 and remaining AWOL until being apprehended on or about 26 February 1970.
6. The applicant consulted with legal counsel on 25 March 1970, and executed a written request for discharge for the good of the service under the provisions of Army

Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service). He acknowledged his understanding of the following in his request:

a. He understood that he could request discharge for the good of the service because the charges preferred against him could result in the imposition of a punitive discharge.

b. Prior to completing this request, he was afforded the opportunity to consult with appointed counsel, who fully advised him of the basis for his contemplated trial by court-martial, the maximum punishment authorized under the UCMJ, of the possible effects of an under other than honorable conditions character of service, and of the procedures and rights available to him.

c. He acknowledged that he was making this request of his own free will and had not been subjected to any coercion by any person. Although counsel furnished him legal advice, this decision was his own. Additionally, he elected not to submit a statement in his own behalf and understood he may encounter substantial prejudice in civilian life.

7. The applicant's immediate and intermediate commander's recommended approval of the applicant's request for separation under the provisions of AR 635-200, Chapter 10, Further, recommending the applicant be furnished an Undesirable Discharge Certificate.

8. The separation authority denied the applicant's request for discharge under the provisions of AR 635-200, Chapter 10 on 17 April 1970.

9. Before a special court-martial on 18 August 1970, at Fort Dix, New Jersey, the applicant was found guilty of going AWOL on or about 26 September 1969 and remaining AWOL until on or about 26 February 1970. He was sentenced to confinement at hard labor for four months and discharge from the service with a bad conduct discharge. The sentence was adjudged on 18 May 1970 and forwarded to the Judge Advocate General of the Army for completion of appellate review.

10. Special Court-Martial Order Number 107, dated 20 April 1971, shows the sentence of a bad conduct discharge and confinement at hard labor for four months, adjudged on 18 May 1970, as promulgated in Special Court-Martial Order Number 146, dated 18 August 1970, had been affirmed, the provisions of Article 71c had been complied with, the sentence was ordered to be duly executed.

11. The applicant was discharged on 30 June 1971, under the provisions of AR 635-200, in the grade of E-1. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he received a DD Form 259A (Bad Conduct Discharge Certificate).and his service was characterized as under other than honorable conditions

with separation program number 292 and reenlistment code 4. He completed 9 months and 8 days of active service with 912 days of lost time for the following periods:

- from 16 August 1968 to 18 August 1968
- from 19 August 1968 to 20 August 1968
- from 21 August 1968 to 22 September 1968
- from 26 September 1968 to 6 October 1968
- from 7 October 1968 to 25 February 1970
- from 26 February 1970 to 28 August 1971
- from 11 November 1970 to 30 June 1971

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

13. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. On his DD Form 293, the applicant indicated Posttraumatic Stress Disorder (PTSD) and Other Mental Health Issues are related to his request. 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 was inducted in the U.S. Army on 25 March 1968. He was not awarded a military occupational specialty, 2) on 22 July 1968 he received an Article 15 for behaving with disrespect towards his superior officer by speaking in a sarcastic manner, 3) on 18 August 1970 the applicant was found guilty by a special court-martial of going absent without leave (AWOL) from on or about 26 September 1968 and remaining AWOL until on or about 26 February 1970. He was sentenced to confinement and hard labor for four months and discharge from the service with a bad conduct discharge, 4) the applicant was discharged on 30 June 1971 under the provisions of AR 635-200, with a separation program number of 292, and reenlistment code of '4.' He was credited with 9 months and 8 days of net active service.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant's DD Form 47 (Record of Induction) shows his PULHES as 111121, indicating there were no psychiatric concerns noted at the time of induction. There were no other in-service medical records available for review.

d. A review of JLV was void of medical information. It is of note that his UOTHC discharge renders him ineligible for VA clinical services.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD and Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD or Other Mental Health Issues. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD or Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to PTSD and Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant 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 from 26 September 1968 to 26 February 1970, 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 length of absence and concurred with the medical advisor's review finding insufficient evidence the applicant had a condition or experience during service that mitigated his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

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.

3/25/2025

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, 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. Section 1556 of Title 10, U.S. 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.
3. Army Regulation 635-200 (Personnel Separations-Enlisted Personnel) sets forth the basic authority for the separation of enlisted personnel. This regulation provides that:
 - a. 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.
 - b. 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.
4. 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. 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.

5. 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//