

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 December 2024

DOCKET NUMBER: AR20240003772

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions (UOTHC) discharge.

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), 14 March 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 19 August 1980
- Department of Veterans Affairs decision document, 24 August 2023
- Veterans County Service Officer summary of applicant, 14 March 2024
- Email, Congressional correspondence, 5 September 2024

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20090011246 on 5 January 2010.
2. The applicant states at the time of service he was young and could barely read or write. He broke his femur during basic training. He is making his request for an upgrade to receive compensation for an injury during service.
3. The applicant enlisted in the Regular Army on 11 January 1979 for a 4-year period. He was awarded the military occupational specialty of 11B (Infantryman). The highest rank he attained was private/E-2.
4. On 16 February 1979, the applicant accepted non-judicial punishment (NJP), under the provisions of Article 15, of the Uniform Code of Military Justice (UCMJ) for disobeying a lawful order from his superior noncommissioned officer, to draw his weapon and get his equipment on or about 13 February 1979. His punishment imposed was forfeiture of \$100.00 per month for two months (one month suspended for 60 days) and extra duty and restriction for 45 days (15 days each suspended for 60 days).

5. He accepted NJP under the provisions of Article 15 of the UCMJ on 2 October 1979 for failing to go to his prescribed appointed place of duty on or about 4 September 1979. His punishment imposed was reduction to the grade of E-1, beginning on 2 October 1979 and forfeiture of \$50.00.

6. Court-martial charges were preferred against the applicant for violations of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with going absent without leave (AWOL) four times from on or about:

- 6 September 1979 and remaining AWOL until on or about 11 September 1979
- 10 October 1979 and remaining AWOL until on or about 3 December 1979
- 4 December 1979 and remaining AWOL until on or about 19 April 1980 when he was apprehended by civilian authorities
- 25 April 1980 and remaining AWOL until on or about 1 July 1980

7. The applicant consulted with legal counsel on 3 July 1980, 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 (UOTHC) 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.

8. The separation authority approval memorandum is absent from the applicant's official military personnel file.

9. The applicant was discharged on 19 August 1980, under the provisions of AR 635-200, Chapter 10, administrative discharge – conduct triable by court-martial, in the grade of E-1. His DD Form 214 shows he received an UOTHC character of service. He was credited with completion of 2 years, 5 months, and 24 days of net active service,

with lost time from 6 September 1979 to 11 September 1979 and from 10 October 1979 to 3 December 1979.

10. The ABCMR reviewed the applicant's request for an upgrade of his UOTHC character of service on 5 January 2010.

a. In the processing of the case the Board discussed:

(1) The applicant's statement of his broken leg, concluding the available record did contain and the applicant did not provide documentation showing he broke his leg in basic training, and he was sent home to recover.

(2) His DD Form 214, finding the applicant had served for a period of 1 year, 7 months, and 9 days of total net active service with his being AWOL for a total of 267 days, with a possibility of an additional 30 days AWOL, further stating the applicant's DD Form 214 incorrectly shows a much longer period of service and far fewer days of time lost.

(3) His receipt of nonjudicial punishments, stating his service cannot be considered to have met the minimum standards of a under honorable conditions (general) discharge or an honorable discharge.

(4) His reported illiteracy, stating the applicant's reported illiteracy may have played a significant part in the applicant's failure to adjust to military life however it did not excuse his repeated incidents of misconduct and his extended periods of AWOL.

b. After careful consideration, the Board found the evidence presented did not demonstrate the existence of a probable error or injustice, the Board determined that the overall merits of the case were insufficient as a basis for correction of the applicant's records and denied his request.

11. The applicant additionally provides:

a. His Department of Veterans Affairs decision document with a rating decision date of 24 August 2023, showing his service connection for treatment purposes only was granted for his left ankle lateral collateral ligament sprain as a secondary to right hip status post broken femur, his left hip strain and arthritis condition secondary to right hip status post broken femur, and his left knee strain and arthritis condition secondary to right hip status post broken femur.

b. A letter from the Veterans County Service Officer, dated 14 March 2024, summarizing the applicant's timeline of service, injuries sustained, and history of medical events.

(1) The Veterans Service Officer, states, in effect, due to the applicant's illiteracy he was not always aware of what he was signing, nor was he administered the Armed Services Vocational Aptitude Battery exam because of his illiteracy. The Veterans County Service Officer summarized the applicant's military service, referencing his article 15, stating according to the applicant he was given poor advice from fellow Soldiers who told him he could go AWOL without severe repercussions. The applicant's chain of command verbally explained the court-martial and the applicant's discharge under Chapter 10, the applicant had limited time to consult with appointed counsel. The Veterans County Service Officer believes the applicant should have never been allowed to enlist in the Army because he was illiterate, the injury sustained in basic training contributed to his poor behavior and conduct, and stating although the applicant was aware of the seriousness of his discharge he could not have foreseen or understood the implications of his discharge by court-martial.

(2) The Veterans County Service Officer states the broken femur suffered by the applicant during basic training has caused him continuous serious medical problems, the fractured femur did not heal properly and caused further damage to his knees and ankles from overcompensation from his right leg. The fractured femur has caused serious blood circulation problems the resulted in the applicant suffering a stroke. He references the Department of Veterans Affairs decision document showing the applicants service-connected disability treatment.

(3) The Veterans County Service Officer states the applicant is unable to receive full entitlements from the Department of Veterans Affairs for his service-connected injuries because of his characterization of service.

c. Additional documentation showing he sought congressional assistance from the Honorable Lance Gooden, United States Representative, in submitting his case to the ABCMR.

12. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service, in lieu of trial by court-martial. An UOTHC character of service is normally considered appropriate.

13. In reaching its determination, the Board can consider the applicant's petition, service record, and statements in light of the published guidance on equity, injustice, or clemency.

14. MEDICAL REVIEW:

a. 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). This is a request for reconsideration of a previous request for a discharge upgrade from Under Other Than Honorable Conditions. The applicant stated that Other Mental Health was related to his request. He also stated that a femur fracture during basic training also contributed to his poor behavior and conduct. He indicated that his youth and not being able to read or write well contributed to the reason for discharge.

b. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant entered active service in the Regular Army 07Jun1977. His MOS was Infantryman. The DD Form 214 did not show foreign service. The applicant was separated on 19Aug1980 under provisions of AR 635-200 chapter 10 for the good of the service, due to conduct triable by court-martial. The charge sheet included 06Sep1979 to 11Sep1979, 10Oct1979 to 03Dec1979, 04Dec1979 to 19Apr1980 and 25Apr1980 to 01Jul1980.

c. Records were not submitted concerning in-service treatment for the right hip fracture condition, and none were found in the available electronic record today. The 24Aug2023 Texas Veterans Commission Rating Decision indicated that treatment notes stated the right hip fracture occurred in 1979. JLV search (and records submitted by the applicant) revealed that conditions that were service connected by the VA include Right Hip Fracture, Left Ankle Collateral Ligament Sprain, Left Hip Strain and Left Knee Strain. Liberal Consideration policy guidance was considered. During JLV search, the problem list of the 12Jan2022 Office Visit in the VA community partners system, revealed that the applicant had been diagnosed with Generalized Anxiety Disorder. However, in encounter notes, there was mention of anxiety, depression and sleep disturbance symptoms related to current housing and financial concerns. There was no mention of in-service stressors.

d. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts that Other Mental Health condition contributed to the reason for his discharge. Under Liberal Consideration, the applicant's self-assertion of mental health issues is sufficient for consideration for a discharge upgrade.

(2) Did the condition exist, or did the experience occur during military service? Yes. Under Liberal Consideration, the applicant's self-assertion of Other Mental Health condition as reported to be due to in-service trauma, is sufficient to affirm its existence while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. Under Liberal Consideration the applicant's contention that his problems with reading

and writing contributed to the reason for his discharge has some merit. Persons with literacy issues tend to feel more isolated (Poor Literacy Linked to Worse Mental Health Worthwhile 23Jan2023 Neuroscience News.com). Feeling isolated can contribute to mental health symptoms including depression and anxiety which can contribute to chronic adjustment issues while in military service. His literacy issues as well as problems with adjustment to military life were noted by command. In the ARBA Medical Advisor's opinion, a nexus between the applicant's literacy issues and chronic adjustment issues is probable and could have contributed to the applicant's decision to absent himself without authority on multiple occasions.

BOARD DISCUSSION:

1. The Board carefully considered the applicant's request, supporting documents, evidence in the records, a medical review, and published Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement, his record of service, the frequency and nature of his misconduct, and the reason for his separation. The Board considered the applicant's mental health claim and the review and conclusions of the ARBA Medical Advisor. The applicant provided no evidence of post-service achievements or letters of reference in support of a clemency determination.
2. The Board concurred with the conclusion of the medical advising official regarding there being a nexus between the applicant's literacy issues and probable associated adjustment issues and his misconduct. Based on a preponderance of the evidence, the Board determined the applicant's character of service should be changed to under honorable conditions (general).

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

■	■	■	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
:	:	:	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined that the evidence presented was sufficient to warrant amendment of the ABCMR's decision in Docket Number AR20090011246 on 5 January 2010. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing his DD Form 214 to show his character of service as under honorable conditions (general).

12/16/2024

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. 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 ABCMR applicants (and/or their counsel) prior to adjudication.
2. Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, provided guidance for the administrative separation of enlisted personnel:
 - a. Chapter 10 of this regulation provided a member who has committed an offense or offenses, the punishment for which, under the Uniform Code of Military Justice and the Manual for Courts-Martial, 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 member, or, until final action on the case by the court-martial convening authority. A member who is under a suspended sentence of a punitive discharge may also submit a request for discharge for the good of the Service. An under other than honorable conditions discharge certificate normally is appropriate for a member who is discharged for the good of the Service.

However, the separation authority may direct a general discharge certificate if such is merited by the member's overall record during the current enlistment.

b. An honorable discharge is a separation with honor. The issuance of an honorable discharge certificate is predicated upon proper military behavior and proficient performance of duty during the member's current enlistment or period of obligated service with due consideration for the member's age, length of service, grade, and general aptitude. Where a member has served faithfully and performed to the best of his ability, and there is no derogatory information in his military record, he should be furnished an honorable discharge certificate.

c. An under honorable conditions (general), discharge is a separation from the Army under honorable conditions. It is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

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

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 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 (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.

4. 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//