

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 3 December 2024

DOCKET NUMBER: AR20240003922

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions discharge and a change to separation code, reentry code, and separation authority.

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)

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 AR20200003021 on 24 November 2020.
2. The applicant marked "Other Mental Health" on his application but did not provide documentary evidence in support of his claim.
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 20 June 1977.
 - b. On 25 May 1984, court-martial charges were preferred on the applicant for being absent without authority from on or about 11 November 1980 to 12 November 1980 and on or about 14 November 1980 to 18 May 1984.
 - c. On 25 May 1984, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:
 - maximum punishment
 - he was guilty of the charges against him or of a lesser included offense
 - he does not desire further rehabilitation or further military service

- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life

d. On 30 May 1984, the chain of command recommends approval of the applicant's request for discharge in lieu of trial by courts-martial. He would be issued an Under Other Than Honorable Conditions Discharge Certificate.

e. On 5 June 1984, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge in lieu of trial by courts-martial. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

f. On 20 June 1984, the applicant reduced to the grade of private (E-1), with a discharge date of 29 June 1984.

g. On 29 June 1984, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 3 years, 6 months, and 6 days of active service with 1278 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as "For the Good of the Service - In Lieu of Trial by Court-Martial," with reentry code 3, 3B, 3C. It also shows he was awarded or authorized:

- Marksman Marksmanship Qualification Badge with Rifle (M-16)
- Army Service Ribbon
- Overseas Service Ribbon
- Marksman Marksmanship Qualification Badge with Hand Grenade

4. On 24 November 2020, the ABCMR rendered a decision in Docket Number AR202000003021. The Board considered the applicant's statement, the applicant's record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial. The applicant provided insufficient evidence of post-service achievements in support of a clemency determination. Based on 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.

5. There is no evidence the applicant has applied to the Army Discharge Review Board for review of her discharge within that board's 15-year statute of limitations.

6. By regulation (AR 635-200), an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

7. 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.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request of an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends OMH as related to his request.

b. 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:

- Applicant enlisted into the Regular Army on 20 June 1977.
- On 25 May 1984, court-martial charges were preferred on the applicant for being absent without authority from on or about 11 November 1980 to 12 November 1980 and on or about 14 November 1980 to 18 May 1984.
- On 25 May 1984, after consulting with legal counsel he requested discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel).
- On 29 June 1984, the applicant was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 3 years, 6 months, and 6 days of active service with 1278 days of lost time. He was assigned separation code KFS and the narrative reason for separation listed as "For the Good of the Service - In Lieu of Trial by Court-Martial," with reentry code 3, 3B, 3C.
- On 24 November 2020, the ABCMR rendered a decision in Docket Number AR202000003021. The Board determined the overall merits of this case were insufficient as a basis for correction of the record.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant stated in his prior application to the Board, he got married at a young age and lived off post with his spouse. He found out his wife was cheating on him and to save his marriage, went back to Pennsylvania with her. He should have listened to his heart and left her and stayed in the Army. He cannot believe he threw that away for a woman he later divorced. The applicant's letter is available in its entirety in the applicant's file.

d. Due to the period of service, no active-duty electronic medical records were available for review. No hardcopy medical documentation was submitted for review related to the applicant's time in service.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and no VA electronic medical records were available for review. The applicant did not submit any medical documentation post-military service substantiating his assertion of OMH.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant does not provide a rationale or explanation of the behavioral health condition he is asserting. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any other mental health condition. And while the applicant self-asserted OMH, he did not provide any medical documentation substantiating any BH diagnosis.

h. Per Liberal Consideration guidelines, his selection of OMH on his application is sufficient to warrant consideration by the Board.

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 DoD guidance for liberal consideration of discharge upgrade requests.

a. Discharge upgrade: Deny. The evidence shows the applicant was charged with commission of an offense (AWOL) punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. Also, the applicant provided insufficient evidence of post-service achievements in support of a clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

b. Narrative Reason for Separation and Separation Code: Deny. The narrative reason for separation is governed by specific directives. The applicant was discharged under the provisions of paragraph 10 of AR 635-200. The narrative reason specified by Army Regulations for a discharge under this chapter is "In Lieu of Trial BY Court-Martial" and the Separation Code is "KFS." AR 635-5, Separation Documents, governs preparation of the DD Form 214 and dictates that entry of the narrative reason for separation and separation code, will be entered exactly as listed in AR 635-5-1, Separation Program Designator (SPD) Codes. A discharge in lieu of trial by court-martial has a corresponding Separation Code of KFS. The Board found no mitigating factors that would merit a change to the applicant's narrative reason for discharge or associated Separation Code. In view of the foregoing, the Board determined that the reason for discharge was both proper and equitable and there is no reason to change it.

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 to amend the decision of the ABCMR set forth in Docket Number AR20200003021 on 24 November 2020.

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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 635-5-1 (Separation Program Designator (SPD) Codes) states SPD codes are three-character alphabetic combinations which identify reasons for and types of separation from active service. The SPD code of "KFS" was the correct code for

Soldiers separating under chapter 10 “For the Good of the Service - In Lieu of Trial by Court-Martial”.

3. Army Regulation 601-210 (Regular Army and Army Reserve Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the RA and the United States Army Reserve. Table 3-1 included a list of the RA RE codes. RE codes are numbered 1, 3, and 4.

- RE-1 applies to Soldiers completing their term of active service who are considered qualified to reenter the U.S. Army; they are qualified for enlistment if all other criteria are met
- RE-3 applies to Soldiers who are not considered fully qualified for reentry or continuous service at the time of separation, but the disqualification is waivable; those individuals are ineligible unless a waiver is granted
- RE-4 applies to Soldiers ineligible for reentry

4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) 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.

b. Paragraph 3-7b (General Discharge) 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. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

5. 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 post-traumatic stress disorder (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.

6. 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, 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, 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.

7. 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 (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 based on 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.

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//