

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 20 December 2024

DOCKET NUMBER: AR20240004034

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record)
- Self-authored letter
- Character reference letters (4)
- Criminal background check
- Social Security Administration (SSA) letter
- Various in-service documents
- Medical documents

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 has been mentally ill since childhood. As a teen, he was hospitalized three times for suicidal behavior. This followed him into the Army. He failed at every aspect of being a Soldier. This disgrace has followed him every day for over 30 years. Since 2020, he has been under psychiatric care and takes medication. This is the best he has done. He humbly asks for understanding and compassion.
3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD) and other mental health issues are related to his request.
4. On 25 February 1986, the applicant enlisted in the Regular Army for 3 years. The highest grade he attained was E-3.
5. On 25 August 1986, the applicant self-enrolled in the Alcohol and Drug Abuse Prevention and Control Program for alcohol abuse.

6. On 5 May 1987, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military control on 12 May 1987.
7. On 28 May 1987, the applicant accepted non-judicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for going AWOL. His punishment included reduction to E-2, forfeiture of \$150.00 per month for two months, and 45 days extra duty.
8. On 16 June 1987, the applicant was reported as AWOL a second time, and remained absent until he returned to military control on 22 June 1987.
9. On 8 July 1987, the applicant accepted NJP under Article 15 of the UCMJ, for being disrespectful in language to a superior noncommissioned officer, on or about 4 June 1987; and going AWOL. His punishment included reduction to E-1, forfeiture of \$150.00, and 45 days extra duty.
10. On 4 August 1987, the applicant was reported as AWOL a third time, and remained absent until he his apprehension by civil authorities on 4 March 1989.
11. Court-martial charges were preferred against the applicant on 15 March 1989, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL, from on or about 4 August 1987 thru 4 March 1989.
12. On 15 March 1989, the applicant consulted with legal counsel and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a bad conduct discharge; and the procedures and rights that were available to him.
 - a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged his understanding that by requesting discharge, he was admitting guilt to the charge against him, or of a lesser included offense that also authorized the imposition of a bad conduct or dishonorable discharge. He further acknowledged he understood that 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.
 - b. He declined to submit a statement in his own behalf.
13. On 14 July 1989, his commander recommended approval of the applicant's request for discharge.

14. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge on 4 August 1989, and directed the issuance of an UOTHC discharge certificate.

15. The applicant was discharged on 22 August 1989. His DD Form 214 (Certificate of Release or Discharge from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service – in lieu of trial by court-martial. He was discharged in the lowest enlisted grade and his service characterized as UOTHC. He was assigned separation code KFS and reenlistment codes 3, 3B, and 3C. He completed 1 year, 10 months, and 29 days of net active service this period with 578 days of lost time.

16. The applicant provides:

- a. Four-character reference letters that collectively attest to his faith, empathy, mental health, and selfless support for others within his community.
- b. Criminal background check that shows he has no criminal record nor warrants.
- c. Letter from the SSA that shows he became disabled and is entitled to monthly disability benefits.
- d. Medical documents that show he has been diagnosed and treated for various injuries and illnesses, including bipolar disorder, anxiety, and suicidal ideation.

17. The applicant was charged due to the 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 Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

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

19. MEDICAL REVIEW:

- a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He contends he experienced mental health conditions including PTSD that mitigate 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 25 February 1986; 2) There is evidence the applicant was found AWOL three

times from 5-12 May 1987; 16-22 June 1987; and on 4 August 1987, the applicant was reported as AWOL a third time, and remained absent until he his apprehension by civil authorities on 4 March 1989; 3) On 22 August 1989, the applicant was discharged, Chapter 10, for the good of the service – in lieu of trial by court-martial. His service was characterized as UOTHC.

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

c. The applicant asserts he was experiencing mental health conditions including PTSD while on active service, which mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health disorder, while on active service. There is evidence he self-enrolled in the Alcohol and Drug Abuse Prevention and Control Program for alcohol abuse on 25 August 1986.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition, and he does not receive any service-connected disability. The applicant provided numerous civilian medical documents from 2016-2023 from various providers and facilities. The applicant consistently reported a traumatic childhood, and he has been consistently diagnosed with various mental health disorders since 2016 to include anxiety, depression, suicidality, insomnia, bipolar disorder, and ADHD. The applicant has inconsistently reported his military history to providers, and there is insufficient evidence the applicant has been diagnosed with a mental health condition related to his military service.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions including PTSD which mitigates his misconduct. The applicant has been diagnosed with mental health conditions by civilian behavioral health providers starting in 2016.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions including PTSD that mitigates his misconduct while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition including PTSD, while he was on active service. The applicant did report a history of trauma and mental health symptoms prior to his enlistment. However, there is insufficient evidence beyond self-report the applicant has been diagnosed with a mental health condition prior to 2016. The applicant did repeatedly go AWOL while on active service. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition at that time. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that 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. One potential outcome was to concur with the advising official finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct. However, upon further review of the applicant's request, available military records and medical review, the Board notwithstanding the advising official finding insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.
2. The Board determined there is sufficient evidence of in- service mitigating factors to overcome the misconduct of repeated AWOL. The Board agreed under liberal consideration, relief is warranted. The Board noted the applicant's post service achievements and his character letters of support attesting to his community engagement, integrity, and work ethic. The Board found the applicant self-enrolled in the Alcohol and Drug Abuse Prevention and Control Program for alcohol abuse. Based on the preponderance of evidence, the Board agreed an upgrade of the applicant's discharge to under honorable (general) conditions is warranted.

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 the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of Army records of the individual concerned be corrected by amending the applicant's DD Form 214 for the period ending 22 August 1989 to show his characterization of service as under honorable (general) conditions discharge.

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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. Title 10, U.S. Code, Section 1556, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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. The version in effect at the time provided 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.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, 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.

5. The Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. 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, 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 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.

6. 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//