

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 December 2024

DOCKET NUMBER: AR20240004311

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) characterization of service to honorable, and to appear before the Board.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Certificate of Birth
- Commonwealth of Kentucky Uniform Citations (2)
- Extract from Title 38 - Code of Federal Records (CFR) 3.12

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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, in effect, he went absent without leave (AWOL) due to a family emergency. His father attempted to murder his mother and he went home to try to help her. He was young at the time and felt it was the best decision, given the situation. He would have applied for an upgrade sooner, but he has been incarcerated and in an active addiction that developed after those unfortunate events. Prior to his misconduct he had a top secret security clearance. He provided his birth certificate as proof of his father's name and relationship to him. He indicates on his DD Form 149, that post-traumatic stress disorder (PTSD) is related to his request.

3. On 6 April 2006, the applicant enlisted in the Regular Army for a period of 4 years. Upon completion of Basic Combat Training at Fort Jackson, SC he was assigned to a unit at Fort Gordon, GA for completion of Advanced Individual Training (AIT).

4. The applicant's duty status was changed as follows:

- from Present for Duty (PDY) to AWOL effective 5 September 2006
- from AWOL to PDY effective 7 September 2006

- from PDY to AWOL to Dropped from Rolls (DFR) and reported as a deserter effective 6 October 2006
- from DFR to Attached/PDY effective 12 January 2007 when he was apprehended by civil authorities and returned to military control

5. A DD Form 458 (Charge Sheet) shows on 25 January 2007, court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ) for being AWOL from on or about 6 October 2006 until on or about 12 January 2007.

6. On 25 January 2007, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10, in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him. The applicant elected not to submit any statements in his own behalf.

7. On 31 January 2007, the applicant's immediate commander recommended approval of his request for discharge with his service characterized as UOTHC.

8. On 8 February 2007, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He directed his service be characterized as UOTHC, and further directed that the applicant be reduced to the lowest enlisted grade of E-1, prior to execution of the discharge. Orders show the applicant was reduced to private (PV1)/E-1 effective 8 February 2007.

9. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged on 2 March 2007, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial By Court-Martial" with Separation code "KFS" and Reentry code "4." His service was characterized as UOTHC. He was credited with completing 7 months and 19 days of net active service this period. He had time lost due to AWOL from 5 to 6 September 2006 and from 6 October 2006 to 11 January 2007. He did not complete AIT and was not awarded a military occupational specialty.

10. The applicant provides the following documents:

- a. A certificate of birth, which shows his father's name as D.R.T.
- b. Two Commonwealth of Kentucky Uniform Citations show the applicant's father was arrested for domestic situations with the applicant's mother. He was arrested for the following charges on the dates shown:

- 10 May 2006 - 2nd Degree Assault (Domestic Violence); Unlawful Imprisonment; and Wanton Endangerment
- 12 May 2006 - for Kidnapping

c. An extract from Title 38 CFR 3.12 wherein he highlighted the following subparagraph:

(ii) Reasons for going AWOL. Reasons which are entitled to be given consideration when offered by the claimant include family emergencies or obligations or similar types of obligations or duties owed to third parties. The reasons for going AWOL should be evaluated in terms of the person's age, cultural background, education level and judgment maturity. Consideration should be given to how the situation appeared to the person himself or herself and not how the adjudicator might have reacted. Hardship or suffering incurred during overseas service or as a result of combat wounds or other service-incurred or aggravated disability is to be carefully and sympathetically considered in evaluating the person's state of mind at the time the prolonged AWOL period began.

11. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

12. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. By regulation, an applicant is not entitled to a hearing before the Board.

13. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. He selected PTSD 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 6 April 2006.
- Applicant's duty status was changed as follows:
- from Present for Duty (PDY) to AWOL effective 5 September 2006
- from AWOL to PDY effective 7 September 2006
- from PDY to AWOL to Dropped from Rolls (DFR) and reported as a deserter effective 6 October 2006

- from DFR to Attached/PDY effective 12 January 2007 when he was apprehended by civil authorities and returned to military control
- A DD Form 458 (Charge Sheet) shows on 25 January 2007, court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ) for being AWOL from on or about 6 October 2006 until on or about 12 January 2007.
- On 25 January 2007, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), Chapter 10, in lieu of trial by court-martial.
- Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged on 2 March 2007, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial By Court-Martial" with Separation code "KFS" and Reentry code "4." His service was characterized as UOTHC. He was credited with completing 7 months and 19 days of net active service this period. He had time lost due to AWOL from 5 to 6 September 2006 and from 6 October 2006 to 11 January 2007. He did not complete AIT and was not awarded a military occupational specialty.

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 states he went absent without leave (AWOL) due to a family emergency. His father attempted to murder his mother, and he went home to try to help her. He was young at the time and felt it was the best decision, given the situation. He would have applied for an upgrade sooner, but he has been incarcerated and in an active addiction that developed after those unfortunate events. Prior to his misconduct he had a top secret security clearance. He provided his birth certificate as proof of his father's name and relationship to him.

d. Active-duty electronic medical records available for review show on 8 September 2006 the applicant was assessed by behavioral health and reported learning that while he was in basic training his father attempted to kill his mother. His father was incarcerated on drug charges and awaiting trial. The applicant wanted to leave the Army to support his mother. During this encounter the applicant reported a history of drug use prior to military service, including marijuana and cocaine, as well as exposure to his father's domestic violence. The applicant was diagnosed with Adjustment Disorder. A note dated 12 September 2006, indicates the applicant spoke with command, was given support, and he reported feeling calmer about the situation.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and no VA electronic behavioral health treatment records were available for review. On 8 October 2023, a staff member of ARBA's Case Management Division, requested the applicant provide medical documents supporting his assertion of

PTSD. No response was provided, and the applicant did not submit any medical documentation post-military service substantiating his assertion of PTSD.

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 PTSD as related to his request.

(2) Did the condition exist or experience occur during military service? Yes. There is medical documentation indicating the applicant was diagnosed with Adjustment Disorder during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. The applicant was discharged due to being AWOL from on or about 6 October 2006 until on or about 12 January 2007. While in service, the applicant was diagnosed with Adjustment Disorder due to a significant familial stressor that apparently resolved with his father's incarceration. After review of all available information, the applicant's sole in service BH diagnosis was Adjustment Disorder and the VA has not service connected the applicant for any BH conditions. An Adjustment Disorder is a transient reaction to stress and does not provide mitigation in the absence of another mitigating BH condition. And while the applicant self-asserted PTSD, he did not provide any medical documentation substantiating any BH diagnosis.

h. Per Liberal Consideration guidelines, his assertion of PTSD is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. 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. The evidence of record shows the applicant was charged with commission of

an offense (AWOL) punishable under the UCMJ with a punitive discharge. After 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 and carry an under other than honorable conditions discharge. The Board found no error or injustice in the applicant's available 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 determination that there is insufficient evidence to support the applicant had a mental health condition that mitigates his misconduct. Also, the applicant provided insufficient evidence of a persuasive nature of post-service achievements or letters of reference 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.

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.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
4. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), in effect at the time, set forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 10 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.
 - b. 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.

c. 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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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 UOTHC 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 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.

7. 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, 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//