

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 December 2024

DOCKET NUMBER: AR20240004437

APPLICANT REQUESTS: upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record), 8 February 2024
- Applicant Self-authored Statement, 9 February 2024
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 3 October 1979
- letter, Army Board for Correction of Military Records, 12 January 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 states he had a severe reaction to the shots he received prior to boot camp and was hospitalized for approximately a week. When he was given a series of shots, he had a severe allergic reaction and passed out. He woke up in the hospital and lost time. He should have restarted boot camp but was put back into training and behind by about a week. He was harassed, punished, and ridiculed for passing out from the shots.
3. The applicant provided a copy of his DD Form 214 and a letter confirming he sent a copy of it.
4. A review of the applicant's service records reflects:
 - a. On 10 October 1978, he enlisted in the U.S. Army Reserve for 6 years with an understanding he would complete 4 years of service in a USAR unit vacancy and complete the remaining 2 years in the USAR Control Group (Annual Training). He

further agreed to satisfactorily complete an initial period of active duty training (IADT) of not less than 20 weeks.

b. On 4 December 1978, he reported to the Reception Station, Fort Jackson, for IADT, and on 8 December 1978, he was relieved from the Reception Station and attached to Fort Gordon to attend Basic Training.

c. A DA Form 4187 (Personnel Action), dated 1 February 1979, shows he was in a status of relieved from his attachment and assigned but not joined to his unit; he was absent without leave (AWOL) from Company A, 6th Battalion, 1st Signal Training Brigade, Fort Gordon.

d. On 3 March 1979, his status was changed from AWOL to dropped from the rolls (DFR) from Company A, 6th Battalion, 1st Signal Training Brigade, Fort Gordon.

e. On 23 August 1979, he completed an information sheet, indicating he surrendered to military authorities at the U.S. Army Personnel Control Facility (PCF), Fort Dix. He indicated he completed 4 weeks of Basic Combat Training and he did not wish to return to duty.

f. On 24 August 1979, he underwent a medical examination and he gave a report of medical history. He noted he was in good health. The examining physician noted he had had no disqualifying medical conditions, and he found the applicant qualified for separation.

g. On 28 August 1979, a court martial charge was preferred against him. A DD Form 458 (Charge Sheet) reflects he was charged with one specification of AWOL from his unit, Company A, 6th Battalion, 1st Signal Training Brigade, Fort Gordon, from on or about 1 February until on or about 23 August 1979 (201 days).

h. On 29 August 1979, he was interviewed by an official at the PCF, stating, in effect, his father died 7 years earlier and he and his mother had been living alone since then. Once he was in basic combat training, he became more and more concerned for his mother's well-being. He did not particularly like the Army to begin with and he went AWOL. He spoke to his drill sergeant about his problem, but he was unsympathetic.

i. On 30 August 1979, he consulted with legal counsel and requested a discharge for the good of the service under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), chapter 10. He acknowledged:

- he was making the request of his own free will
- at least one of the charges preferred against him under the UCMJ authorized the imposition of a bad conduct or dishonorable discharge

- he was guilty of at least one of the charges against him or of a lesser included offense
- he did 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, and 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
- he may submit a statement in his own behalf with this request and indicated did not desire to do so

j. On 6 September 1979, the Commanding Officer, PCF, Fort Dix recommended approval of his request for separation with issuance of an Under Other Than Honorable Conditions Discharge Certificate.

k. On 7 September 1979, the intermediate commander recommended approval of his request for separation.

l. A DA Form 3836 (Notice of Return of U.S. Army Member from Unauthorized absence), dated 10 September 1979, shows he was apprehended by civil authorities and returned to military control at Fort Hamilton, Brooklyn, on 21 August 1979.

m. On 17 September 1979, the separation approval authority, approved his request and directed his discharge with issuance of an Under Other Than Honorable Conditions Discharge Certificate.

n. On 3 October 1979, he was discharged from active duty. His DD Form 214 shows in:

- Block 4a (Grade/Rate, or Rank) – PV1
- Block 11 (Primary Specialty Number, Title, and Year and Months in Specialty) – none
- Block 12c (Net Active Service This Period) – 2 months, and 26 days
- Block 13 (Decorations, Medals, Badges, Commendations, Citations, and Campaign Ribbons Awarded or Authorized) – none
- Block 18 (Remarks) – excess leave of 34 days from 30 August 1979—3 October 1979
- Block 24 (Character of Service) – Under Other Than Honorable Conditions
- Block 25 (Separation Authority) – Army Regulation 635-200, Chapter 10

- Block 28 (Narrative Reason for Separation) – Administrative Discharge Conduct Triable by Court-Martial
- Block 29 (Dates of Time Lost During This Period) – 9 January 1979—21 January 1979; 1 February 1979—22 August 1979

5. 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.

7. MEDICAL REVIEW:

1. 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). The applicant requests a discharge upgrade from Under Conditions Other Than Honorable to Honorable. He contends that his excess leave was under the time allowed. He also contends that he had a severe reaction to the immunizations received at bootcamp for which he states that he passed out and was hospitalized for one week. He further states that when released from the hospital, he returned to duty and was harassed, ultimately punished and ridiculed for passing out.

2. The ABCMR ROP summarized the applicant's record and circumstances surrounding the case. The applicant enlisted in the US Army Reserve and was in active service from 19781204 to 19791003. He was discharged under provisions of AR 635-200, chapter 10 for conduct triable by court-martial. The charge sheet included one specification of AWOL from 01Feb1979 to 23Aug1979.

3. The applicant reported in the 24Aug1979 Report of Medical History for separation (Standard Form 93), that he was in good health. Of note, he did not endorse 'adverse reaction to serum, drug or medicine'. He also did not endorse any of the mental health related symptoms. The Report of Medical Examination (SF 88) did not show any physical abnormalities. Reaction to immunization was not documented in the service medical record or current available electronic medical record. He was deemed medically qualified for separation. At the time of separation processing, the applicant indicated that his reason for AWOL was due to believing that his single parent mother needed him at home.

4. There were no treatment records available for review. Review of JLV did not show any treatment encounters. Liberal Consideration policy guidance was considered; however, the record did not show a mental health diagnosis.

5. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. Under Liberal Consideration, the applicant's self-assertion of being harassed and ridiculed while in service is sufficient for possible mitigation.

(2) Did the condition exist, or did the experience occur during military service? Yes. Under Liberal Consideration, the applicant's self-assertion of being harassed and ridiculed while in service is sufficient to acknowledge its presence while in service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the 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 harassment while in service. In the absence of documentation supporting his assertion, there is insufficient evidence to establish that his misconduct was related to or mitigated by his report of harassment. However, as per Liberal Consideration, the applicant's self-assertion of harassment and ridicule is sufficient to merit 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 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 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 establish that his misconduct was related to or mitigated by his report of harassment. 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.

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.

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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 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. 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.

3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3-7 provided:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

a. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1984, 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, where required, after referral, until final actions by the court-martial convening authority.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged
- burden of proof
- possible defenses
- possible punishments
- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

(4) An under other than honorable 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.

4. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "JFS" corresponded to "Court-Martial," and the authority, Army Regulation 635-200, Chapter 10.

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. 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. 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 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.

8. 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.

//NOTHING FOLLOWS//