

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 10 December 2024

DOCKET NUMBER: AR20240004495

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions (UOTHC) to under honorable conditions (general).

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

- DD Form 149 (Application for Correction of Military Record), 30 January 2024
- two self-authored statements
- official military personnel file

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, in effect, during 1978 through 1979 timeframe he was responsible for Army Regulations, if someone needed an Army Regulation, he foresaw the operation and ensured the Army Regulation was placed back in its designated spot. One incident, he encountered an officer who was requesting a regulation, but had not wanted to sign for it, which was a part of the procedure, he additionally wanted to make a copy of the regulation which was against regulatory guidance, adding if someone would have saw the copied Army Regulation, he would have gotten into trouble. The said officer disregarded him and ordered him to make a copy of the regulation and leave it on his desk.

a. He felt uncomfortable making a copy of the regulation and ended up requesting a two week leave to return home. During his leave period, he was absent without leave (AWOL), upon his return to the military installation he surrendered to military police and faced the prospect of a dishonorable discharge. He told authorities the incident and he was informed he would face court-martial and potential imprisonment.

b. He was granted an UOTHC discharge, however reflecting on the situation he wonders and questions why their decision to issue a different character of service was

never changed. The experience shaped his actions and decisions during what was a challenging period.

3. The applicant annotates other mental health and reprisal/whistleblower are related to his request.

4. The applicant enlisted in the Army National Guard (ARNG) on 11 May 1970, for a 6-year period.

a. He entered active duty for training on 27 November 1970. After completion of his training, he was honorably released from active duty on 11 April 1971.

b. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was awarded the military occupational specialty of 16F (Light Air Defense Artillery Crewmember), he attained the rank of private/E-2, and he served 4 months and 15 days of net active service this period.

5. After a period of time serving in the OHARNG, he was honorably discharged on 5 November 1975 for enlistment in the regular component. His National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows he attained the rank of specialist fifth class and served 5 years, 5 months, and 25 days of service.

6. He enlisted in the Regular Army on 6 November 1975, for a 4-year period, in the grade of E-2. He was awarded the military occupational specialty of 11B (Infantryman). The highest rank he attained was corporal.

7. On 25 July 1978, the applicant accepted nonjudicial punishment under the provision of Article 15, of the Uniform Code of Military Justice (UCMJ) for absenting himself without authority on or about 1 July 1978 and remaining absent until on or about 18 July 1978. His punishment imposed was reduction to E-3, forfeiture of \$109.00 (suspended for 30 days), and 14 days extra duty (suspended for 30 days).

8. A DA Form 3836 (Notice of Return of US Army Member from Unauthorized Absence) shows the applicant was dropped from rolls on 18 May 1979 and he surrendered to military authorities on 5 June 1979.

9. Court-martial charges were preferred against the applicant on 8 June 1979, for violation of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with one specification of absenting himself without leave (AWOL) from on or about 19 April 1979 and remaining AWOL until on or about 5 June 1979.

10. The applicant consulted with legal counsel on 11 June 1979, and executed a written request for discharge for the good of the service under the provisions of Army

Regulation 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 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 understood he may encounter substantial prejudice in civilian life and elected to submit a statement in his own behalf.

(1) He submitted a statement requesting a discharge under the provisions of Chapter 10, stating in effect, his request is due to personal pressure that he was undergoing. Before his divorce in 1977, his ex-wife ran up bills and he had no idea about these bills.

(2) He summarized his financial problems, and ended with he was unable to work under the pressure of the military with his financial problems. He was told what to do every minute of every day, he pushed himself until he could no longer be pushed, he had tried but he could not take anymore pressure and he requested to be released from active duty.

11. On 11 July 1979, the applicant's immediate commander recommended approval of his request for separation and further recommended issuance of an UOTHC discharge. Additionally referencing the applicant's submitted statement, stating his conduct rendered him triable by court-martial under circumstances which could lead to a bad conduct or dishonorable discharge.

12. On 11 July 1979, the applicant's intermediate commander recommended approval of the applicant's request for discharge for the good of the service and further recommended an UOTHC discharge.

13. The separation authority approved the applicant's request for discharge for the good of the service on 18 July 1979, and further directed the applicant receive a UOTHC discharge, and that he be reduced to the lowest enlisted grade of E-1.

14. The applicant's DD Form 214 (Report of Separation from Active Duty) shows he was discharged on 8 August 1979, under the provisions of Army Regulation 635-200, Chapter 10, in the grade of E-1. He received an UOTHC characterization of service, a separation code of JFS, and reenlistment code 3. He was credited with 3 years and 7 months of net active service with 64 days of time lost from 1 July 1978 to 17 July 1978, and from 19 April 1979 to 4 June 1979. His awards included the Army Good Conduct Medal.

15. The applicant additionally provides his official military personnel file, approximately 108 pages of documentation varying from his enlistment contracts, separation documents, medical history reports, numerous DA Forms 4187 (Personnel Action) changing his duty status due to reasons of hospital stays, times of being absent, his complete separation packet, and various enlisted evaluation reports showing he received positive accolades from his rater and endorser.

16. Discharges under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service from the Soldier to avoid a trial by court-martial. An UOTHC character of service is normally considered proper.

17. 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.

18. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general). He contends OMH and Reprisal/Whistleblower 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 in the Army National Guard of the United States on 11 May 1970, for a 6-year period. He entered active duty for training on 27 November 1970. After completion of his training, he was honorably released from active duty on 11 April 1971.
- After a period of time serving in the Ohio Army National Guard, he was honorably discharged on 5 November 1975 for enlistment in the regular component.

- Applicant enlisted into the Regular Army on 6 November 1975.
- On 25 July 1978, the applicant accepted nonjudicial punishment under the provision of Article 15, of the Uniform Code of Military Justice (UCMJ) for absenting himself without authority on or about 1 July 1978 and remaining absent until on or about 18 July 1978.
- A DA Form 3836 (Notice of Return of US Army Member from Unauthorized Absence) shows the applicant was dropped from rolls on 18 May 1979 and he surrendered to military authorities on 5 June 1979.
- Court-martial charges were preferred against the applicant on 8 June 1979, for violation of the UCMJ. The relevant DD Form 458 (Charge Sheet) shows he was charged with one specification of absenting himself without leave (AWOL) from on or about 19 April 1979 and remaining AWOL until on or about 5 June 1979.
- Applicant consulted with legal counsel on 11 June 1979, and executed a written request for discharge for the good of the service under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10 (Discharge for the Good of the Service).
- He submitted a statement requesting a discharge under the provisions of Chapter 10, stating in effect, his request was due to personal pressure that he was undergoing. Before his divorce in 1977, his ex-wife ran up bills and he had no idea about these bills. He summarized his financial problems, and ended with he was unable to work under the pressure of the military with his financial problems. He was told what to do every minute of every day, he pushed himself until he could no longer be pushed, he had tried but he could not take any more pressure and he requested to be released from active duty.
- The applicant's DD Form 214 (Report of Separation from Active Duty) shows he was discharged on 8 August 1979, under the provisions of Army Regulation 635-200, Chapter 10, in the grade of E-1. He received an UOTHC characterization of service, a separation code of JFS, and reenlistment code 3. He was credited with 3 years and 7 months of net active service with 64 days of time lost from 1 July 1978 to 17 July 1978, and from 19 April 1979 to 4 June 1979.

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, during 1978 through 1979 timeframe he was responsible for Army Regulations, if someone needed an Army Regulation, he foresaw the operation and ensured the Army Regulation was placed back in its designated spot. One incident, he encountered an officer who was requesting a regulation, but had not wanted to sign for it, which was part of the procedure, he additionally wanted to make a copy of the regulation, which was against regulatory guidance, adding if someone would have saw the copied Army Regulation, he would have gotten into trouble. The said officer disregarded him and ordered him to make a copy of the regulation and leave it on his desk. He felt uncomfortable making a copy of the regulation and ended up requesting a two week leave to return home. During his leave period, he was absent

without leave (AWOL), upon his return to the military installation he surrendered to military police and faced the prospect of a dishonorable discharge. He told authorities the incident and he was informed he would face court-martial and potential imprisonment.

d. Due to the period of service, no active-duty electronic medical records were available for review. The applicant provided hardcopy documentation of a medical examination for the purpose of separation, dated 6 June 1979, showing he endorsed depression, anxiety, sleepwalking, head injury, and dizziness. However, the examining physician cleared him for separation.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and no VA electronic behavioral health 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. The applicant's statement at the time he requested a discharge indicates issues related to financial stressors and the pressure of the military. His written statement at that time did not indicate any regulatory issues related to an officer, nor does it indicate any mental health concerns. In addition, the applicant received an Article 15 for his first incident of being AWOL and was court-martialed following his

second incident of being AWOL which lasted nearly two months. This is contrary to the applicant's statement of requesting a two week leave to return home and during his leave period being without leave (AWOL), which upon his return led to his facing a dishonorable discharge.

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 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 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.

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 (USC), 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, USC, Section 1556, 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.

3. 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.

4. 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.

5. 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//