

IN THE CASE OF: [REDACTED]

BOARD DATE: 19 December 2024

DOCKET NUMBER: AR20240004534

APPLICANT REQUESTS: reconsideration of his request for upgrade of his uncharacterized discharge to under honorable conditions (general).

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

- Letter in lieu of DD Form 149 (Application for Correction of Military Record)
- Email correspondence with additional evidence
- Various medical documents

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 AR20230003451 on 26 October 1983.

2. In a new argument the applicant states pertinent evidence was not considered in his previous Board. Due to limitations on the DD Form 149 application, he emailed pertinent medical documentation to the Army Review Board Agency (ARBA) mailbox. His questions and requests were learned after the Board had convened. He does not have financial or medical benefits from the Army. He was diagnosed with Polycythemia Vera, a chronic blood cancer with an average life expectancy between 5-7 years. The applicant's life became more difficult, and he felt his mortality more than ever. He is still around despite the disease's effect on his life, with not a dime taken from the government. He did not include any friends' testimonials with his application because he does not want to talk about his military debacle.

3. On 8 December 1982, the applicant enlisted in the Regular Army for 3 years. His record shows he was not awarded a military occupational specialty.

4. On 20 February 1983, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military control that same day.

5. On 23 February 1983, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice (UCMJ), for going AWOL. His punishment included forfeiture of \$130.00 and seven days confinement (suspended).

6. On 12 March 1983, the applicant was reported as AWOL a second time, and remained absent until his apprehension by civil authorities on 11 June 1983.

7. Court-martial charges were preferred against the applicant on 22 June 1983, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL from 12 March 1983 to 11 June 1983.

8. On 22 June 1983, 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.

9. On 29 June 1983, the applicant's commander recommended approval of his request for discharge, and further recommended the issuance of an entry level status discharge. The commander noted that the applicant's obvious lack of maturity and length of time in the military indicated he should be separated.

10. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge on 7 July 1983, and directed an uncharacterized entry level separation.

11. The applicant was discharged on 19 July 1983. 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 court-martial. He was discharged in the lowest enlisted grade and his character of

service was entry level status (uncharacterized). He completed 4 months and 11 days of net active service this period with 91 days of lost time.

12. The applicant petitioned the ABCMR requesting upgrade of his uncharacterized discharge. On 26 October 2023, the Board voted to deny relief and determined the overall merits of this case were insufficient as a basis for correction of the applicant's records.

13. The applicant provides email correspondence and various medical documents that show he has been diagnosed and received treatment for Polycythemia Vera.

14. 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.

15. Soldiers are considered to be in an entry-level status when they are within their first 180 days of active duty service. The evidence of record shows the applicant was in an entry-level status at the time of his separation. As a result, his service was appropriately described as "uncharacterized" in accordance with governing regulations.

16. 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.

17. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations: The applicant is applying to the ABCMR requesting reconsideration of their prior denial of his request for an upgrade of his entry level status characterization of service. In a self-authored letter, he states in part:

"In 2010, I was diagnosed with Polycythemia Vera, a blood cancer and at that time, my Oncologist had me doing Phlebotomy treatments 2x per month or more

depending on my RBC [red blood cell count]. This is a chronic disorder, she also made me aware that upon diagnosis the average life expectancy was 5-7 years.

Quite frankly, I always thought it could happen at any time. Regardless, I am still here, and my last wish is for my Military Discharge status to be changed before I pass.”

b. The Record of Proceedings details the applicant’s military service and the circumstances of the case. The applicant’s DD 214 for the period of service under consideration shows he entered the regular Army on 8 December 1982 and was discharged 19 July 1983 under the separation authority provided by chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (1 May 1982): Discharge for the Good of the Service. It does not contain a period of service in an imminent danger or hazardous duty pay area. The DD 214 shows one period of time lost under 10 USC § 972, from 12 March 1983 thru 10 June 1983 (91 days).

c. This request was previously denied by the ABCMR on 26 October 2023 (AR20230003451). Rather than repeat their findings here, the board is referred to the record of proceedings for that case. A medical advisory was not obtained for this case. Therefore, this advisor will review the EMR for potentially mitigating behavioral health conditions and assess new evidence submitted by the applicant.

d. Post-service civilian medical documentation confirms the applicant was diagnosed with and treated for polycythemia vera in 2010. No contemporaneous medical documentation was submitted with the application. JLV shows he is not registered with VA and there are no entries on his medical problem list.

e. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO.

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

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. The evidence shows, while in training, the applicant went AWOL from 2 March to 11 June 1983. His chain of command preferred court-martial charges against him for this AWOL. He requested a voluntary discharge in lieu of trial by court-martial. Since he was still in initial entry training, he was separated with an uncharacterized discharge after completing 4 months and 11 days of active service. He did not complete initial entry training and was not awarded or authorized any awards. An uncharacterized discharge is given to individuals who separate prior to completing 180 days of military service, or when the discharge action was initiated prior to 180 days of service. The Board found no error or injustice in his separation processing. The Board found no error or injustice in his separation processing. 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 narrative reason for separation 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.

12/20/2024

X

CHAIRPERSON

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 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.

2. Army Regulation 15-185 (ABCMR) sets forth procedures for processing requests for the correction of military records. Paragraph 2-15a governs requests for reconsideration. This provision of the regulation allows an applicant to request reconsideration of an earlier decision of the ABCMR. The applicant must provide new relevant evidence or argument that was not considered at the time of the ABCMR's prior consideration.

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

a. Chapter 3 provides that a separation will be described as entry level with uncharacterized service if the Soldier has less than 180 days of continuous active duty service at the time separation action is initiated.

b. Paragraph 3-7a provides that 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. 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. When characterization of service under other than honorable conditions is not warranted for a member in entry level status, the separation will be described as an entry level separation.

d. An uncharacterized discharge is not meant to be a negative reflection of a Soldier's military service. It simply means the Soldier was not in the Army long enough for his or her character of service to be rated as honorable or otherwise.

4. 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/NR) 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.

//NOTHING FOLLOWS//