

IN THE CASE OF: [REDACTED]

BOARD DATE: 27 January 2025

DOCKET NUMBER: AR20240004570

APPLICANT REQUESTS:

- upgrade of his under other than honorable conditions discharge to honorable
- correction of his records to show he was discharged due to physical disability

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

DD Form 149 (Application for Correction of Military Record)

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 did not provide an argument and/or reason for his request.
3. The applicant enlisted in the Regular Army on 28 September 1977.
4. A DA Form 4187 (Personnel Action) shows the applicant departed absent without leave (AWOL) on 7 December 1978. A second DA Form 4187 shows he was apprehended by civilian authorities on 10 December 1978 for civilian charges of possession of an alcoholic beverage. He was confined in city jail pending court appearance. On 11 December 1978, he appeared in county court and the charge was dropped. He was then extradited to appear in another county's court for armed robbery. He was confined in county jail pending court appearance. On 22 January 1979, he appeared in court and the charge was dropped. He returned to military control the same day.
5. Additional DA Forms 4187 show the applicant again departed AWOL on 10 February 1979 and remained AWOL until he was apprehended by civilian authorities and returned to military control on 3 May 1979.

6. On 10 May 1979, court-martial charges were preferred against the applicant for his AWOL offenses.

7. The applicant's complete separation proceedings are not available. However, the record shows that on 11 May 1979, after consulting with military defense counsel, the applicant signed a statement acknowledging the following:

a. I (applicant) declare that I have been advised by defense counsel that at the present time the government has not received the necessary documentation and or records with which to obtain a conviction by court-martial. This is not due to any fault of the government but merely to the time required to request and mail the documents and records. Further, I have been advised by my military counsel that he cannot completely advise me without these records. I realize my defense counsel is limited by the few records that are available as to the advice he can give. Nevertheless knowing, all this to be true, I waive all defenses that may have become known had my defense been able to review my records.

b. Knowing all these to be true, I knowingly, willingly, and voluntarily declare that I was AWOL from the U.S. Army from 7 to 10 December 1978 and from 10 February to 3 May 1979.

c. I further declare that my military defense counsel has explained to me to my complete understanding and satisfaction all the legal and social ramifications of that type of discharge and what it will mean to me in the future.

8. The applicant's DD Form 214 (Report of Separation from Active Duty) shows he was discharged on 15 June 1979 under the provisions of Army Regulation 635-200 (Active Duty Enlisted Administrative Separations), chapter 10, for the good of the service in lieu of trial by court-martial, with an under other than honorable conditions character of service.

9. 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 (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 28 August 1981 discharge characterized as under other than honorable conditions and a referral to the Disability Evaluation System. On his DD Form 149, he had indicated that PTSD, Other Mental Health conditions, and Sexual Assault/Harassment are issues related to his requests.

c. 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 28 September 1977 was discharged on 15 June 1979 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (1 March 1978): Discharge for the Good of the Service – Conduct Triable by Court Martial.

d. A Charge Sheet (DA Form 458) shows the applicant was charged with two periods of absence without leave (AWOL): 7-10 December 1978 and 10 February – 3 May 1979.

e. On 11 May 1979, the applicant was advised of and declined the opportunity to continue medical care and if eligible, be retired for physical disability. The nature of this medical condition is unknown: No medical documentation was submitted with the application, his period of service predates the EMR, and there are no encounters in JLV.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts PTSD, Other Mental Health conditions, and Sexual Assault/Harassment.

(2) Did the condition exist or experience occur during military service? Applicant asserts these were incurred while in the Army.

(3) Does the condition or experience actually excuse or mitigate the discharge? No: The applicant has submitted no medical documentation indicating a diagnosis of any of these conditions, and none was found in a review of the supporting documentation or the electronic records. However, as per liberal consideration guidance, his self-assertions alone are sufficient to merit consideration by the board.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the misconduct leading to the applicant's separation and the findings below from the medical review,

- (1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Applicant asserts PTSD, Other Mental Health conditions, and Sexual Assault/Harassment.
- (2) Did the condition exist or experience occur during military service? Applicant asserts these were incurred while in the Army.
- (3) Does the condition or experience actually excuse or mitigate the discharge? No.

the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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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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 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 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted personnel.
 - a. Chapter 10 provides that a member who has committed an offense for which the authorized punishment includes a punitive discharge, may submit a request for discharge for the good of the service in lieu of trial by court-martial. The request may be submitted at any time after charges have been preferred and must include the individual's admission of guilt. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses, the type of discharge normally given under the provisions of this chapter, the loss of Department of Veterans Affairs benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. Although a general discharge is authorized, an under other than honorable conditions discharge is normally considered appropriate.
 - 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. Paragraph 3-7b provides that 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.

3. Army Regulation 40-501 (Standards of Medical Fitness) provides that for an individual to be found unfit by reason of physical disability, they must be unable to perform the duties of his or her office, grade, rank or rating. Performance of duty despite impairment would be considered presumptive evidence of physical fitness.

//NOTHING FOLLOWS//