

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 January 2025

DOCKET NUMBER: AR20240004582

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to under honorable conditions (General).

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

- DD Form 149 (Application for Correction of Military Record)
- [REDACTED] Certificate of Death
- Letter to addressed to the Board
- Character letter
- DD Form 214 (Certificate of Release or Discharge from Active Duty)

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:

a. He acknowledges that his behavior during his time in the Army was uncharacteristic and inconsistent with the values he holds dear. During that challenging period, he faced immense mental strain as he tried to support his mother and siblings through his father's terminal illness. This situation impacted him more deeply than he was willing to admit, leaving him feeling isolated and unsupported by his command.

b. Regrettably, he allowed his circumstances to influence his actions, and he now recognizes that his responses were inappropriate. He is genuinely remorseful for his behavior and the consequences it had on those around him. He sincerely hopes the Army can extend forgiveness to him. He believes that clemency would afford him the opportunity to seek the mental health care he needs through the VA Health Care system.

c. It is important to consider that he was grappling with an undiagnosed mental disorder following his father's death from terminal cancer while he was on active duty. The emotional turmoil he experienced caused him to react in ways that could be likened to that of a teenager. This profound loss significantly affected his life and, consequently, had a lasting impact on his career. As of note, the applicant did not provide documentary evidence in support of his medical claim.

3. The applicant provides:

a. [REDACTED] Certificate of Death reflects the applicant's father passed away on [REDACTED]. Immediate cause of death was cited as metastatic renal cell carcinoma due to chronic renal insufficiency.

b. Character letter, written by Mr. [REDACTED] which states, he has known the applicant for over twenty-five years. Mr. [REDACTED] further states, the applicant experienced a profound personal tragedy: his father was diagnosed with terminal cancer, which ultimately led to his passing. This situation had a significant impact on the applicant's mental and emotional well-being, resulting in behavior that was uncharacteristic of him. This may possibly explain the behaviors observed between September 1989 and January 1990, leading up to his discharge. He believes the applicant deserves consideration for the veteran benefits he is entitled to as a former Soldier of the United States Army.

c. DD Form 214 reflects the applicant was discharged on 8 December 1994, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for the good of the service – in lieu of court-martial, separation code of KFS, reentry code 3, and a character of service as under other than honorable conditions. Item 4a (Grade, Rate or Rank) shows his rank as Private (PVT)/E-1. He completed 3 years, 5 months, and 9 days of active service and he had lost time as follows:

- 16 April 1989 thru 23 April 1989
- 1 May 1989 thru 4 June 1989
- 26 September 1989 thru 8 January 1990

4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 13 May 1986 for 4 years.

b. The applicant accepted nonjudicial punishment (NJP) on 14 June 1989 for absencing himself, without authority, from his unit on two occasions, on or about 16 April 1989 until on or about 21 April 1989 and on or about 1 May 1989 until on or about 5 June 1989. His punishment included a reduction to the grade of E-1.

c. DD Form 458 (Charge Sheet), dated 18 January 1990, reflects court-martial charges were preferred against the applicant for one specification of being AWOL from on or about 26 September 1989 until on or about 9 January 1990.

d. On 18 January 1990, the applicant consulted with legal counsel. He was advised of the basis for the contemplated trial by court-martial, the maximum permissible punishment authorized under the Uniform Code of Military Justice (UCMJ), the possible effects of an under other than honorable conditions discharge, and the procedures and rights that were available to him. Subsequent to receiving legal counsel, he voluntarily requested discharge under the provision of AR 635-200, 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 an undesirable discharge
- he acknowledged he understood that if his discharge request was accepted 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
- he was advised he could submit any statements he desired in his own behalf; he did not submit any statements

d. On 18 November 1994, the separation authority approved the applicant's request for discharge, under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for the good of the service, and directed that he be reduced to the lowest enlisted grade and discharged under other than honorable conditions.

e. The applicant was discharged on 16 March 1990, under the provisions of AR 635-200, chapter 10, for the good of the service – in lieu of court-martial, separation code of KFS, reentry code 3, and a character of service as under other than honorable conditions. He completed 3 years, 5 months, and 9 days of active service.

5. There is no evidence that the applicant applied to the Army Discharge Review Board for review of his discharge within the board's 15-year statute of limitations.

6. By regulation, a member who has committed an offense for which the authorized punishment includes a punitive discharge may submit a request for discharge 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. A discharge under other than honorable conditions is normally considered appropriate.

7. 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.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to general under honorable conditions. On his DD Form 149, the applicant indicated that Other Mental Health Issues are related to his request. More specifically, he indicated that he was suffering from an undiagnosed mental disorder due to the death of his father from terminal cancer. 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: 1) the applicant enlisted in the Regular Army (RA) on 13 May 1986, 2) he accepted nonjudicial punishment on 14 June 1989 for absenting himself from his unit on two occasions on 16 April 1989 until 21 April 1989 and on 01 May 1989 until 05 June 1989, 3) a DD Form 458 dated 18 January 1990 shows court-martial charges were preferred against the applicant for being AWOL from on or about 26 September 1989 until on or about 09 January 1990, 4) the applicant was discharged on 16 March 1990 under the provisions of Army Regulation (AR) 635-200, Chapter 10, for the good of the service-in lieu of court-martial, with a separation code of KFS and reentry code of '3.'

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. A Report of Medical Examination dated 20 March 1986 for the purposes of enlistment shows item number 42, psychiatric, as 'normal' on clinical evaluation. The associated Report of Medical History shows he did not endorse any BH treatment history at the time of enlistment. A Report of Medical Examination dated 12 October 1988 for the purposes of an Airborne Physical shows psychiatric as 'normal' on clinical evaluation. The associated Report of Medical History shows he did not endorse having any BH-related concerns at the time of the evaluation. A Screening Note of Acute Medical Care dated 16 December 1988 for the purposes of in-processing shows the applicant reported he was in good health at the time of the screening. Review of the applicant's in-service medical records included as part of his application did not show any BH diagnosis or treatment history.

d. A review of JLV shows the applicant is not service connected through the VA for any conditions. A note dated 25 October 2019 shows the applicant initiated BH services

through the VA due to depression with his diagnosis documented as Major Depressive Disorder, Recurrent, mild. He has also been diagnosed with Insomnia, Unspecified through the VA. Review of the available records do not specify the date of onset for his condition(s). He has been trialed on several medications for treatment of depression, insomnia, and nightmares to include Trazodone, Prazosin, Hydroxyzine, Duloxetine, Buspirone, and Amitriptyline. Records show he has continued to seek BH treatment through the VA through present day.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the applicant's in-service medical records was void of any BH diagnosis or treatment history. Although VA records show he has been diagnosed and treated for Major Depressive Disorder, Recurrent and Insomnia, Unspecified through the VA, he is not service-connected for any BH conditions and the date(s) of onset of the conditions were not specified in the available records. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

BOARD DISCUSSION:

After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was warranted. The Board carefully considered the applicant's request, supporting documents, evidence in the records, and published Department of Defense guidance for liberal consideration of discharge

upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was charged with absenting himself from his unit from 26 September 1989 until on or about 9 January 1990, punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to Other Mental Health Issues.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of the applicant's in-service medical records was void of any BH diagnosis or treatment history. Although VA records show he has been diagnosed and treated for Major Depressive Disorder, Recurrent and Insomnia, Unspecified through the VA, he is not service-connected for any BH conditions and the date(s) of onset of the conditions were not specified in the available records. In absence of documentation supporting his assertion, there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

The Board concluded there was insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to other mental health issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration. Additionally, the Board concluded based on his non-violent misconduct, length of time since his discharge, and total years of honorable service an upgrade to under honorable conditions (General) was warranted.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3



GRANT FULL RELIEF

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GRANT PARTIAL RELIEF

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GRANT FORMAL HEARING

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DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by amending the applicant's DD Form 214, for the period ending 16 March 1990 to show an under honorable conditions (General) characterization of service.

X

[Redacted Signature]

CHAIRPERSON

[Redacted Name]

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 (Personnel Separations - Enlisted Personnel), sets forth the basic authority for the separation of enlisted personnel.

a. 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.

b. 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.

c. Chapter 10 of that regulation provides, in pertinent part, that a member who has committed an offense or offenses 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. Although an honorable or general discharge is authorized, a discharge under other than honorable conditions is normally considered appropriate.

3. Hagel Memorandum, dated 3 September 2014, states liberal consideration will be given in petitions for changes in characterization of service to service treatment records entries which document one or more symptoms which meet the diagnostic criteria of PTSD or related conditions. Special consideration will be given to VA determinations which documents PTSD or PTSD related conditions connected to military service. In cases in which PTSD or PTSD related conditions may be reasonably determined to have existed at the time of discharge, those conditions will be considered potential mitigating factors in the misconduct that caused the under other than honorable conditions characterization of service.

4. Army Directive 2014-28 (Request to Upgrade Discharge by Veterans claiming PTSD), dated 3 November 2014, states the office of the Surgeon General will provide expert guidance to ARBA on clinical manifestations of PTSD and behavioral indicators to help ARBA assess the presence of PTSD and its potentially mitigating effects. When

requested, the office will provide consultation to supplement ARBA's effort on complex cases that exceed ARBA's capabilities.

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 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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

7. 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/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. 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 based on 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. 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, United States 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//