

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2025

DOCKET NUMBER: AR20240004909

APPLICANT REQUESTS: an upgrade of his characterization of service from under other than honorable conditions to general, under honorable conditions

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

- DD Form 149 (Application for Correction of Military Record)
- Medical Records (24 pages)

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 when he was in service, he was doing fine until he went home to get married. He got married and it was a complete mistake. He tried to rectify the mistake by bringing his wife to Fort Hood with him. She was unfaithful from their wedding day. He sent her home and though he received counseling on base, he was completely distracted and unfocused. He ended up leaving to try to make it work, but it did not. Since that time, he has gone to college and achieved a Master of Business Administration and a Doctorate. He is presently a pastor. He has no benefits and is not seeking any benefits. He simply respectfully asks that his discharge be upgraded to general, under honorable conditions just for his records. He would be forever grateful for his record to reflect honorable.
3. The applicant provides 24 pages of medical records, which show he has a long history of mental health treatment with a diagnosis of bipolar disorder, depressive disorder, anxiety disorder, and cocaine abuse and dependence.
4. A review of the applicant's service record shows:

a. He enlisted in the Regular Army on 16 May 1978. The highest grade he held was private (PV2)/E-2.

b. A DA Form 4187 (Personnel Action) shows his duty status changed from Present for Duty (PDY) to Absent Without Leave (AWOL) on 20 February 1979.

c. Summary Court-Martial Order Number 3, issued by Headquarters, 27th Maintenance Battalion, 1st Cavalry Division, Fort Hood, TX on 7 April 1979, shows the applicant was found guilty of one specification of being AWOL from on or about 20 February 1979 to on or about 13 March 1979. The sentence, adjudged on 5 April 1979, included reduction to the grade of private (PVT)/E-1, to perform extra duty for 22 days, and 22 days restriction. The sentence was approved on 7 April 1979.

d. DA Forms 4187, show the applicant's duty status changed on the following dates:

- PDY to AWOL – 20 April 1979
- AWOL to Dropped from Rolls (DFR) – 19 May 1979
- DFR to PDY – 9 January 1985 (apprehended by civil authorities)

e. Court-martial charges were preferred against the applicant. His DD Form 458 (Charge Sheet) shows he was charged with one specification of being AWOL from on or about 20 April 1979 to on or about [this date was left blank on the DD Form 458].

f. The applicant's service record does not contain the separation packet or the facts and circumstances pertaining to his chapter proceedings.

g. The applicant was discharged on 1 March 1985. His DD Form 214 (Certificate of Release or Discharge from Active Duty) shows he was discharged under the provisions of Army Regulation 635-200, chapter 10, in the rank/grade of private (PV1)/E-1, and his service was characterized as under other than honorable conditions. He completed 1 year and 4 days of net active service during the covered period. This form also shows in:

- Item 18 (Remarks): Time lost after normal expiration term of service (ETS), 16 May 1981 – 8 January 1985 (not chargeable under 10 USC 972)
- Item 28 (Narrative Reason for Separation): For the Good of the Service – In Lieu of Court Martial
- Item 29 (Dates of Time Lost During This Period): 20 February 1979 – 12 March 1979; 20 April 1979 – 15 May 1981

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

6. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

7. The Board should consider the applicant's overall 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 characterization of service. He contends he experienced mental health conditions that mitigate his misconduct. 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 on 16 May 1978; 2) Court-Martial Orders, on 7 April 1979, show the applicant was found guilty of being AWOL from 20 February-13 March 1979; 3) Court-martial charges were preferred against the applicant for being AWOL starting 20 April 1979 to on or about [this date was left blank on the DD Form 458]. The applicant was apprehended by civil authorities on 09 January 1985. The applicant's service record does not contain the separation packet for review; 4) On 1 March 1985, the applicant was discharged from active duty, Chapter 10 (For the Good of the Service, In Lieu of Court Martial) with an under other than honorable conditions characterization of service.

b. The Army Review Boards Agency (ARBA) Medical Advisor reviewed the available supporting documents and the applicant's available military service records. The VA's Joint Legacy Viewer (JLV) and civilian hardcopy medical records provided by the applicant were also examined.

c. The applicant asserts he was experiencing mental health conditions while on active service, which mitigates his misconduct. There is insufficient medical evidence the applicant was diagnosed with a mental health disorder, while on active service.

d. A review of JLV provided insufficient evidence the applicant has ever been diagnosed with a mental health condition, and he does not receive any service-connected disability. The applicant provided civilian medical documentation from Western Psychiatric Institute and Clinic from Pittsburgh, PA. The documentation included various psychiatric reports between 2004-2014. There was evidence the applicant had been diagnosed and treated for illegal substance abuse/dependence, bipolar disorder, depression, and suicidal ideation. The applicant has undergone multiple types of psychiatric treatment programs both inpatient and outpatient to address his mental health conditions. His first treatment program was reported to have occurred in 1987.

There was insufficient evidence provided that the applicant's mental health conditions were related or present during his active service.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced mental health conditions which mitigates his misconduct. The applicant provided evidence that he was diagnosed with mental health conditions including depression and bipolar disorder in 2004 unrelated to his military service.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced mental health conditions that mitigates his misconduct while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition, while he was on active service. The applicant did go AWOL, which could be avoidant behavior and a natural sequelae to mental health conditions like depression or bipolar disorder. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition at the time of active service. Yet, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention alone is sufficient for the board's consideration.

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, the evidence found within the military record, and published Department of Defense guidance for consideration of discharge upgrade requests, the Board found relief was not warranted.

2. The Board carefully considered the applicant's contentions, his military record, the frequency and nature of his misconduct, his apprehension while AWOL, the charges against him, his request for separation, the reason for his discharge and the character of service he received. The Board considered his statement, the medical evidence he provided and the review and conclusions of the medical advisor to the Board. The Board found: (1) the applicant asserts he experienced mental health conditions which mitigates his misconduct. The applicant provided evidence that he was diagnosed with

mental health conditions including depression and bipolar disorder in 2004 unrelated to his military service; (2) the applicant asserts he experienced mental health conditions that mitigates his misconduct while on active service (3) there is insufficient evidence beyond self-report the applicant was experiencing a mental health condition, while he was on active service. The Board noted that the applicant did go AWOL, which could be avoidant behavior and a natural sequelae to mental health conditions like depression or bipolar disorder. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition at the time of active service. Apart from his statement, the applicant did not provide evidence of post-service achievements or reference letters in support of a clemency consideration by the Board. Based on a preponderance of evidence, the Board determined that the applicant's separation and character of service was not in error or unjust and that an upgrade was not warranted as a matter of liberal consideration.

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.

X//Signed//

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 (AR) 635-200 (Personnel Separations - Enlisted Personnel), in effect at the time, set forth the basic authority for the separation of enlisted personnel.

a. Chapter 10 provided that a member who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The request for discharge may be submitted at any time after court-martial charges are preferred against the member, regardless of whether the charges are referred to a court-martial and regardless of the type of court-martial to which the charges may be referred. The request for discharge may be submitted at any stage in the processing of the charges until final action on the case by the court-martial convening authority. Commanders will ensure that a member is not coerced into submitting a request for discharge for the good of the service. The member is given reasonable time to consult with a consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the member may elect to submit a request for discharge for the good of the service. The member will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a member who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the member's overall record during their current enlistment. For members who had completed entry level status, characterization of service as honorable was not authorized unless the member's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. 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. A 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. The recipient of a general discharge is normally a member whose military record and performance is satisfactory.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

3. AR 635-5-1 (Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 10 for the Good of the Service in lieu of court-martial would receive a separation code of "KFS."

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met.
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment.
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted.
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted.
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

5. 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.

6. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records may grant clemency regardless of the court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards 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.

7. 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//