

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 February 2025

DOCKET NUMBER: AR20240005096

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions character of service.

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

- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States), 17 April 2024
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge), 18 January 1973
- Medical Documentation, Migrant Health Center, Western Region, Inc.

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 AC96-07570 on 10 September 1997.
2. The applicant indicates post-traumatic stress disorder (PTSD), other mental health, and intimate partner violence/domestic violence are related to his request.
3. The applicant enlisted in the Regular Army on 28 September 1971 for a 2-year period. He held military occupational specialty 36C (Lineman). The highest rank he attained was private first class/E-3.
4. His DA Form 20 (Enlisted Qualification Record) shows he had foreign service in Germany from 7 May 1972 to 7 September 1973.
5. Court-martial charges were preferred against the applicant for violations of the Uniform Code of Military Justice (UCMJ). The relevant DD Form 458 (Charge Sheet) shows he was charged with two specifications of unlawfully striking two Soldiers in the face and body with his fist on or about 22 September 1972 and two specifications of failing to go to his prescribed appointed place of duty on or about 17 October 1972, physical training formation and work call formation.

6. Additional court-martial charges were preferred against him for violations of the UCMJ. The DD Form 458 shows he was charged with wrongfully communicating a threat to another Soldier on or about 4 November 1972 and committing assault on another Soldier by striking him with the means likely to produce grievous bodily harm on or about 4 November 1972.

7. He consulted with legal counsel on 4 December 1972 and executed a written request for discharge for the good of the service under the provisions of Army Regulation (AR) 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 a under other than honorable conditions 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. He acknowledged that he may be deprived of many rights and benefits as a Veteran under both Federal and State law. Additionally, he elected to not submit a statement in his own behalf.

8. On 20 December 1972, the applicant's immediate commander recommended approval of his request for separation and further recommended issuance of an undesirable discharge. Additionally adding, the applicant was prone to violence and constant efforts to correct his actions had failed.

9. On 20 December 1972 and 21 December 1972, his intermediate commanders recommended approval of his request for separation with further recommended issuance of an undesirable discharge.

10. The separation authority approved the applicant's request for discharge for the good of the service in lieu of trial by court-martial. He further directed the applicant be furnished an Undesirable Discharge Certificate.

11. The applicant's DD Form 214 shows he was discharged on 18 January 1973 under the provisions of AR 635-200, for the good of the service, in the grade of E-1. His

characterization of service was under conditions other than honorable. He was credited with 1 year, 3 months, and 21 days of net active service this period. He did not complete his first full term of service.

12. The applicant additionally provides medical documentation from the Migrant Health Center, Western Region, Inc, 16 pages, showing the applicant has received psychological services since 5 October 2018 to present. The applicant was treated for symptoms of anxiety, depression, problematic cannabis use, and past traumas. He has benefited from the therapeutic space to explore emotions, internal conflicts, and limiting beliefs.

13. The ABCMR reviewed the applicant's request for discharge upgrade on 10 September 1997. The Board determined the applicant had not presented and the records did not contain sufficient justification to conclude that it would be in the interest of justice to grant the relief requested or to excuse the failure to file within the time prescribed by law, the Board denied the applicant's request.

14. Administrative separations under the provisions of AR 635-200, Chapter 10 are voluntary requests for discharge for the good of the service. A characterization of service of under conditions other than honorable is normally considered appropriate.

15. 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.

16. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his characterization of service from under other than honorable conditions (UOTHC) to something more favorable. He contends he experienced an undiagnosed mental health condition, including PTSD, and intimate partner violence/domestic violence (IPV) that mitigates his misconduct.

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:

- The applicant enlisted into the Regular Army on 28 September 1971.
- The applicant's Charge Sheet shows he was charged with two specifications of unlawfully striking two Soldiers in the face and body with his fist on 22 September 1972 and two specifications of failing to go to his prescribed appointed place of duty on 17 October 1972.
- Additional court-martial charges were preferred against him for violations of the UCMJ. The DD Form 458 shows he was charged with wrongfully communicating

a threat to another Soldier on 4 November 1972 and committing assault on another Soldier by striking him with the means likely to produce grievous bodily harm 4 November 1972. He requested discharge for the good of the service.

- The applicant was discharged on 18 January 1973 and was credited with 1 year, 3 months, and 21 days of net active service this period.

c. Review of Available Records: The Army Review Boards Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant indicated "other mental health," PTSD, and IPV as conditions related to his request, but he did not provide a narrative explanation. Documentation from the Migrant Health Center, Inc. dated 20 March 2024 showed the applicant had received 28 psychotherapy sessions since October 2018 to treat anxiety, depression, problematic cannabis use, and a trauma history, and the author attributed his symptoms to his life experiences and unresolved traumas. The application also included hospital records from September 2018 showing admission for Major Depressive Disorder, and another hospitalization from 26 August 2021 until 1 September 2021 for the same diagnosis as well as anxiety. He was started on an antidepressant medication and a mood stabilizer. There was insufficient evidence that the applicant was diagnosed with PTSD or another psychiatric condition while on active service.

d. The Joint Legacy Viewer (JLV), which includes medical and mental health records from DoD and VA, was also reviewed and showed no history of mental health related treatment or diagnoses.

e. Based on the available information, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support that 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 discharge? Yes. The applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. He provided mental health documentation dating back to 2018, which showed diagnoses of PTSD, Unspecified Anxiety Disorder, and Cannabis Abuse.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he was experiencing a mental health condition while on active service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. The application included records

dating back to 2018, but there was no indication that his symptoms or diagnoses were directly related to his military service. Additionally, the number of years between his service and his initial mental health records would make it very difficult to draw a nexus. Finally, while misconduct related to failing to show up for duty or even wrongfully communicating a threat could be the natural sequelae to a mental health condition, there is typically no nexus between any of the applicant's mental health conditions and striking or assaulting other soldiers.

g. However, the applicant contends he was experiencing a mental health condition or an experience that mitigates his misconduct, and per Liberal Consideration his contention 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 record of service, the frequency and nature of his misconduct, the court-martial charges preferred against him, his request for discharge in lieu of court-martial, the reason for his separation and the character of service he received when discharged in 1973. The Board considered his statement and medical documentation regarding post-traumatic stress disorder (PTSD), other mental health, and intimate partner violence/domestic violence and the review and conclusions of the medical advising official. The Board found: (1) the applicant asserts he had an undiagnosed mental health condition, including PTSD, at the time of the misconduct. He provided mental health documentation dating back to 2018, which showed diagnoses of PTSD, Unspecified Anxiety Disorder, and Cannabis Abuse; (2) the applicant asserts he was experiencing a mental health condition while on active service; (3) the review of military medical and mental health records revealed no documentation of any mental health condition(s) while on active service. The applicant provided records only dated back 2018, but there was no indication that his symptoms or diagnoses were directly related to his military service. While misconduct related to failing to show up for duty or even wrongfully communicating a threat could be the natural sequelae to a mental health condition, there is typically no nexus between any of the applicant's mental health conditions and striking or assaulting other soldiers. The applicant provided no evidence of post-service achievements or references in support of clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation 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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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 ABCMR applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 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 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 conditions other than honorable is normally considered appropriate.

b. 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. 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.

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; traumatic brain injury; sexual assault; or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the sexual assault or sexual harassment was unreported, or the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

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, 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.

//NOTHING FOLLOWS//