

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 29 January 2025

DOCKET NUMBER: AR20240005666

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

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

- DD Form 149 (Application for Correction of Military Record)
- 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, in effect, he received a dishonorable discharge due to being absent without leave (AWOL). He is requesting an upgrade because he was "coached" by a recruiter who knew about the medications he was taking to manage his attention deficit hyperactivity disorder (ADHD) symptoms, leading him to hide them. He struggled to adapt to military life due to his mental health issues. He faced regular "smoking" during basic training and ultimately went AWOL during AIT. He asks that this request be considered, as he has worked to readjust his life circumstances and gain control over his mental health since being discharged from the Army. The recruiter's guidance to conceal his symptoms had a lasting impact, and as a result of this recruitment error, he now faces challenges finding gainful employment, teaching his children to hunt, and applying for benefits.
3. The applicant provides:
 - a. DD Form 214, which reflects he was discharged on 8 December 1998, under the provisions of Army Regulation (AR) 635-200, chapter 10, in lieu of trial by court-martial, separation code KFS, reentry code 3, and character of service of under other than honorable conditions. He served 11 months and 19 days of net active service this

period, with lost time from 15 November 1997 to 16 November 1997 and from 23 November 1997 to 2 June 1998.

b. The applicant did not provide documentary evidence in support of his claim of having mental health issues.

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

a. He enlisted in the Army Reserve on 18 June 1996.

b. The applicant's duty status changed as follows:

- From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 15 November 1997
- From AWOL to PDY, effective 17 November 1997
- From PDY to AWOL, effective 23 November 1997
- From AWOL to Dropped from Rolls (DFR), effective 25 November 1997 (DA Form 4187, Section IV, states, "in accordance with AR 630-10, when a Soldier goes AWOL, returns and is notified of punishment, then goes AWOL again he can be dropped from the rolls.")
- (DD Form 616, Report of Return of Absentee) Returned to military control on 23 May 1998 after being apprehended by civil authorities and returned to military control

c. The complete facts and circumstances surrounding his separation are not available for review.

d. As previously stated in paragraph 3, the applicant was discharged on 8 December 1998, under the provisions of Army Regulation (AR) 635-200, chapter 10, in lieu of trial by court-martial, separation code KFS, reentry code 3, and character of service of under other than honorable conditions. He served 11 months and 19 days of net active service this period, with lost time from 15 November 1997 to 16 November 1997 and from 23 November 1997 to 2 June 1998. Item 11 (Primary Specialty) reflects "None // Nothing Follows."

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.

MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions discharge to honorable. He contends OMH as related to his request.

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:

- Applicant enlisted in the Army Reserve on 18 June 1996.
- Applicant's duty status changed as follows:
- From Present for Duty (PDY) to Absent Without Leave (AWOL), effective 15 November 1997
- From AWOL to PDY, effective 17 November 1997
- From PDY to AWOL, effective 23 November 1997
- From AWOL to Dropped from Rolls (DFR), effective 25 November 1997 (DA Form 4187, Section IV, states, "in accordance with AR 630-10, when a Soldier goes AWOL, returns and is notified of punishment, then goes AWOL again he can be dropped from the rolls.")
- (DD Form 616, Report of Return of Absentee) Returned to military control on 23 May 1998 after being apprehended by civil authorities and returned to military control
- Applicant was discharged on 8 December 1998, under the provisions of Army Regulation (AR) 635-200, Chapter 10, in lieu of trial by court-martial, with separation code KFS, reentry code 3, and character of service of under other than honorable conditions. He served 11 months and 19 days of net active service this period, with lost time from 15 November 1997 to 16 November 1997 and from 23 November 1997 to 2 June 1998.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he received a dishonorable discharge due to being absent without leave (AWOL). He is requesting an upgrade because he was "coached" by a recruiter who knew about the medications he was taking to manage his attention deficit hyperactivity disorder (ADHD) symptoms, leading him to hide them. He struggled to adapt to military life due to his mental health issues. He faced regular "smoking" during basic training and ultimately went AWOL during AIT. He asks that this request be

considered, as he has worked to readjust his life circumstances and gain control over his mental health since being discharged from the Army. The recruiter's guidance to conceal his symptoms had a lasting impact, and as a result of this recruitment error, he now faces challenges finding gainful employment, teaching his children to hunt, and applying for benefits.

d. Due to the period of service, no active-duty electronic medical records were available for review. No hardcopy mental health documentation was submitted for review related to the applicant's time in service.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and has not been treated by the VA for any behavioral health condition. The applicant did not submit any medical documentation post-military service substantiating his assertion of OMH.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any other mental health condition. And while the applicant self-asserted OMH, he did not provide any medical documentation substantiating any BH diagnosis.

h. Per Liberal Consideration guidelines, his assertion of OMH on his application is sufficient to warrant consideration by the Board.

BOARD DISCUSSION:

1. 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 record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of his characterization of service. Upon review of the applicant's petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

2. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service or after his discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses, the VA has not service-connected the applicant for any BH condition, and there is no VA electronic record indicating he has been treated for any other mental health condition. And while the applicant self-asserted OMH, he did not provide any medical documentation substantiating any BH diagnosis.

3. The Board found insufficient evidence of mitigating factors to overcome the misconduct. Although the complete facts and circumstances surrounding his separation are not available for review, the record reflects that the applicant experienced multiple periods of unauthorized absence (AWOL), culminating in being dropped from the rolls (DFR). He was returned to military control after being apprehended by civilian authorities. The Board noted the applicant did not provide statements of support or documentation demonstrating rehabilitation or honorable service. Based on the serious nature of the misconduct and the lack of compelling evidence to warrant clemency, the Board determined that the discharge characterization was appropriate and supported by the record. Therefore, the Board denied relief.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	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 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//

