

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 February 2025

DOCKET NUMBER: AR20240005707

APPLICANT REQUESTS:

- reconsideration of his earlier request for upgrade of his under other than honorable conditions discharge
- a video or telephonic hearing with the Board

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

- DD Form 149 (Application for Correction of Military Record), 15 April 2024
- SF 89 (Report of Medical History), page 1 only
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 20 January 1982

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 AR1999031443 on 27 April 2000.
2. The applicant indicates on his DD Form 149, that other mental health conditions are related to his request. He states, during his service depression and anxiety about deploying caused him stress. He requested leave to see his sick mother, but when he returned he was separated.
3. The applicant provided a copy of his report of medical history, which shows he had depression or excessive worry.
4. A review of the applicant's service records show:
 - a. On 30 January 1979, he enlisted in the Regular Army for 3 years. He attained the rank/pay grade of specialist/E-4.

b. He was reported absent without leave (AWOL) from his unit, Combat Support Company (CSC), 1st Battalion, 18th Regiment, from 31 August 1980 to 5 September 1980 (5 days).

c. On 7 October 1980, he accepted nonjudicial punishment (NJP) under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ) for being AWOL from 31 August 1980 to 5 September 1980; and for being absent from his place of duty on 29 September 1980. His punishment consisted of being reduced to private first class (PFC) and correctional custody for 7 days. He did not appeal this punishment.

d. On 20 May 1981, he accepted NJP under the provisions of Article 15 of the UCMJ for being AWOL from his unit on 18 April 1981; and for being AWOL from his unit from 4 May 1981 to 6 May 1981 (2 days). His punishment consisted of forfeiture of \$50.00 and 14 days of extra duty and restriction. He did not appeal this punishment.

e. He was reported:

- AWOL from his unit on 5 June 1981 to 8 June 1981 (3 days)
- AWOL from his unit on 22 June 1981
- Dropped from the Rolls (DFR) on 21 July 1981
- Present for duty (PDY) on 24 November 1981

f. On 10 December 1981, one court-martial charge was preferred against him for AWOL. A DD Form 458 (Charge Sheet) shows he was charged with one specification of AWOL from his unit, CSC, 1st Battalion, 18th Infantry, Fort Riley from 22 June 1981 to 24 November 1981 (155 days).

g. His commander indicated on his information and summary sheet he was apprehended by civilian police on 24 November 1981 and returned to the control of military authorities. The applicant's statement to his commander indicated he put in for leave but it was denied. He couldn't understand why others were getting leave. He just wanted out of the Army.

h. After consulting with legal counsel on 12 December 1981, the applicant voluntarily requested discharge for the good of the service, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. In doing so, he acknowledged that the charge preferred against him under the UCMJ, authorized the imposition of a bad conduct discharge or dishonorable discharge. He further acknowledged:

- he had not been subjected to coercion with respect to his request for discharge
- he had been advised of the implications that were attached to it

- by submitting the request, he was acknowledging he was guilty of the charge(s) against him or of (a) lesser included offense(s) therein contained which also authorized imposition of a bad conduct or dishonorable discharge
- he could be discharged under other than honorable conditions and he could be ineligible for many or all benefits administered by the Department of Veterans Affairs (VA)
- he could be deprived of many or all Army benefits and he could be ineligible for many or all benefits as a veteran under both Federal and State laws
- he would forfeit all accrued leave and be reduced to the lowest grade of E-1
- he could expect to encounter substantial prejudice in civilian life by reason of an under other than honorable conditions discharge
- he was advised he could submit any statements he desired in his own behalf, and elected to do so
- he was advised of his right to request a separation physical but he elected not to do so

j. On 12 December 1981, he provided a written statement to his commander. His mother was sick, and he wanted to be with her since he had eight siblings, he was the oldest son, and there was not a father figure around the house. His mother needed him around the house to help take care of the younger children. His commander did not approve his leave request, so he wanted to go home.

k. On 14 December the Commander of U.S. Army Personnel Control Facility, Fort Riley, recommended his discharge with an under other than honorable conditions characterization of service.

l. On 15 December 1981, he underwent a medical examination and gave a report of medical history. In his report of medical history, he indicated he experienced depression and/or excessive worry, frequent colds, hay fever, asthma, pain or pressure in his chest, piles or rectal disease, sugar or albumin in his urine, and car or air sickness. The examining physician found he was qualified for separation.

m. On 17 December 1981, he underwent a mental status evaluation as requested by his command. The examining psychiatrist found his behavior was normal, he was fully alert and fully oriented; his mood was unremarkable and thinking process was clear. He found he had the mental capacity to understand and participate in proceedings and was mentally responsible.

n. On 22 December 1981, the Staff Judge Advocate, recommended approval of his request.

o. On the same date, the separation authority approved his request for discharge, directed a characterization of service of under other than honorable conditions, and directed he be reduced to the lowest grade.

p. On 20 January 1982, he was discharged. 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, for conduct triable by court-martial, with a character of service of under other than honorable conditions, and a separation code of JFS and reenlistment code 4. It further reflects he had a total of 165 days' time lost. He had 34 days of excess leave from 18 December 1981 to 20 January 1982. His DD Form 214 further reflects:

(1) Block 4a (Grade, Rate, or Rank) – PV1.

(2) Block 12c (Record of Service), he completed 2 years, 6 months, and 5 days net service this period.

(3) Block 13 (Decorations, Medal, Badges, Citations, and Campaign Ribbons Awarded or Authorized: Army Service Ribbon and Marksman Marksmanship Qualification Badge with Rifle Bar (M-16) and Hand Grenade Bar.

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

6. On 27 April 2000 and in ABCMR Docket Number AR1999031443, the Board denied the applicant's request for an upgrade of his discharge.

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting reconsideration of his previous request for upgrade of his under other than honorable conditions (UOTHC) discharge. On his DD Form 149, the applicant indicated that Other Mental Health Issues are related to his request. 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 30 January 1979, 2) he received an Article 15 on 07 October 1980 for being absent without leave (AWOL) from 31 August 1980 to 05 September 1980 and for being absent from his place of duty on 29 September 1980, 3) on 20 May 1981 he received an Article 15 for being AWOL from his unit on 18 April 1981 and from 04 May 1981 to 06 May 1981, 4) he was reported as being AWOL from his unit on 05 June 1981 to 08 June 1981, and on 22 June 1981. On 21 July 1981 he was dropped from the rolls (DFR). He was reported as present for duty (PDY) on 24 November 1981, 5) court-martial charges were preferred against him on 10 December 1981 for one specification of AWOL from 22 June 1981 to 24 November

1981, 6) he was apprehended by civilian police on 24 November 1981 and the applicant's statement to his commander indicated he had put in for leave but it was denied and could not understand why others were able to take leave. It was noted that he wanted to get out of the Army, 7) After consulting with legal counsel on 12 December 1981, the applicant voluntarily requested discharge for the good of the service, under the provisions of AR 635-200, Chapter 10, 8) on 15 December 1981, he underwent a medical examination and found he was qualified for separation, 9) on 17 December 1981, he underwent a mental status evaluation as requested by his command. The examining psychiatrist found he had the mental capacity to understand and participate in proceedings and was mentally responsible, 10) the applicant was discharged on 20 January 1982 under the provisions of AR 635-200, Chapter 10, for conduct triable by court-martial, with a character of service of under other than honorable conditions, a separation code of JFS and reenlistment code of 4, 12) the applicant's previous petition to the ABCMR summarized in Docket Number AR1999031443 dated 27 April 2000 denied the applicant's request for relief.

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) and Veterans Benefits Management System (VBMS) were 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. The applicant's in-service medical records included as part of his application were reviewed. A Report of Medical History dated 15 December 1981 for the purposes of Chapter 10 Separation shows the applicant endorsed depression or excessive worry and marked "don't know" to nervous trouble of any sort. The associated Report of Medical Examination conducted for the purposes of Chapter 10 separation shows item number 42, psychiatric, as 'normal' on clinical evaluation. A command-referred Mental Status Evaluation (MSE) was conducted on 17 December 1981 and shows all domains of the MSE as within normal limits (WNL). The evaluating provider documented that he had the mental capacity to understand and participate in the proceedings and met retention requirements of AR 40-501, Chapter 3. It was further noted that there was "no evidence of a psychiatric disturbance" and that he was cleared for any administrative action deemed appropriate by command.

d. A review of JLV shows the applicant is 90% service-connected through the VA for various conditions, to include 70% for Mood Disorder. The applicant underwent a VA Compensation and Pension (C&P) examination on 16 July 2024 and was diagnosed with Unspecified Depressive Disorder with Anxious Distress.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is sufficient evidence that the applicant has been diagnosed and service-connected through the VA with a potentially mitigating BH condition: Mood Disorder. This Advisor would contend that the applicant's misconduct is mitigated by his service-connected diagnosis of Mood Disorder.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant is 70% service-connected through the VA for Mood Disorder.

(2) Did the condition exist or experience occur during military service? Yes, the applicant is 70% service-connected through the VA for Mood Disorder. Service-connection establishes that the condition existed during service.

(3) Does the condition or experience actually excuse or mitigate the discharge? Yes. In-service records were void of any BH diagnosis or treatment history; however, the applicant did endorse experiencing depression or excessive worry at the time of his separation examination. Since being discharged from the military, the applicant has been diagnosed and service-connected through the VA with Mood Disorder. As there is an association between lack of motivation, poor decision making, anxiety, and avoidance behaviors there is a nexus between the applicant's diagnosis of Mood Disorder and misconduct of going AWOL. As such, BH mitigation is supported.

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 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 mitigation found within the medical review, the Board concluded there was sufficient evidence to upgrade the characterization of service to General, Under Honorable Conditions.

BOARD VOTE:

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

BOARD DETERMINATION/RECOMMENDATION:

The Board determined the evidence presented is sufficient to warrant a recommendation for relief. As a result, the Board recommends that all Department of the Army records of the individual concerned be corrected by reissuing the applicant a DD Form 214 showing:

- Characterization of Service: Under Honorable Conditions (General)
- Separation Authority: No change
- Separation Code: No change
- Reentry Code: No change
- Narrative Reason for Separation: No change

//SIGNED//

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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. Army Regulation 15-185 (Army Board for Correction of Military Records) prescribes the policies and procedures for correction of military records by the Secretary of the Army acting through the ABCMR. The ABCMR begins its consideration of each case with the presumption of administrative regularity.

a. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

b. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing) or request additional evidence or opinions. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

2. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, set policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons.

a. Chapter 3-7 provided:

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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. Only the honorable characterization may be awarded a member upon completion of his/her period of enlistment or period for which called or ordered to active duty or active duty training or where required under specific reasons for separation unless an entry level status separation (uncharacterized) is warranted.

(2) 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. A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to active duty.

b. Chapter 10 stated a member who has committed an offense or offenses, the punishment of which under the UCMJ and the Manual for Court Martial, 1969 (Revised Edition) includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the member, or, where required, after referral, until final actions by the court-martial convening authority.

(1) A medical examination is not required but may be requested by the member under Army Regulation 40-501 (Medical Services – Standards of Medical Fitness), chapter 10. A member that requests a medical examination must also have a mental status evaluation before discharge.

(2) Commanders will insure that a member will not be coerced into submitting a request for discharge for the good of the service. The member will be given a reasonable time (not less than 72 hours) to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. Consulting counsel will advise the member concerning:

- the elements of the offense or offenses charged
- burden of proof
- possible defenses
- possible punishments
- provisions of Chapter 10
- requirements of voluntariness
- type of discharge normally given under provisions of Chapter 10
- rights regarding the withdrawal of the member's request
- loss of Veterans Administration benefits
- prejudice in civilian life because of the characterization of the discharge

(3) The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. However, authority to approve discharges in cases in which a member has been AWOL for more than 30 days and has been dropped from the rolls of his or her unit as absent in desertion, and has been returned to military control, may be delegated to the commander exercising special court-martial convening authority over the member.

(4) An under other than honorable discharge certificate normally is appropriate for a member who is discharged for the good of the service. However, the separation authority may direct a General Discharge Certificate if such is merited by the member's overall record during the current enlistment.

3. Army Regulation 635-5-1 (Personnel Separations – Separation Program Designators), in effect at the time, listed the specific authorities, regulatory, statutory, or other directive, and reasons for separation from active duty, active duty for training, or full time training duty. The separation program designator "JFS" corresponded to "Administrative Discharge – Conduct Triable by Court-Martial," and the authority, Army Regulation 635-200, chapter 10.

4. 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 Post Traumatic Stress Disorder (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.

5. The acting Under Secretary of Defense for Personnel and Readiness provided clarifying guidance on 25 August 2017, which expanded the 2014 Secretary of Defense memorandum, that directed the BCM/NRs and DRBs to give liberal consideration to veterans looking to upgrade their less-than-honorable discharges by expanding review of discharges involving diagnosed, undiagnosed, or misdiagnosed mental health conditions, including PTSD; traumatic brain injury; or who reported sexual assault or sexual harassment.

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 (BCM/NR) 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.

7. Section 1556 of Title 10, U.S. 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//