

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 4 December 2024

DOCKET NUMBER: AR20240005816

APPLICANT REQUESTS:

- an upgrade of his under other than honorable conditions discharge to honorable, and he checked PTSD and other mental health conditions as contributing factors.
- a video/telephonic appearance before the Board

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)
- Undesirable Discharge Certificate
- DD Form 214 (Report of Separation 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 when his hand was first injured, he went to see the doctor. He was told that it was "ok boy, nothing is wrong with your hand". He told the doctor he was in pain, and they wrapped it and told me to go back to his unit. He was not given any medication. He suffered the whole weekend in pain. He went back to the doctor on the Monday which is when he was told his hand was broken and a cast was on put on his hand. He believes because he was a black man, he was discriminated against, he was not treated, or given the proper pain medication on his first visit.

3. The applicant provided the following documents:

- a. A copy of his Undesirable Discharge Certificate dated 12 November 1975.
- b. A copy of his DD Form 214 shows his record of service.

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

- a. He enlisted in the Regular Army on 23 January 1968.
- b. His DA Form 2-1, Personnel Qualification Record (PQR) shows he was absent without leave (AWOL) the following dates:
 - 31 March 1968 to 11 April 1968 (12 days)
 - 14 August 1968 to 11 January 1971 (891 days)
 - 23 January 1971 to 6 August 1975 (1657 days)
 - 14 August 1975 to 28 August 1975 (Confinement (Military))
- c. On 20 March 1968, he accepted nonjudicial punishment for the following specifications:
 - failure to obey a lawful order
 - failure to report
 - drunk and disorderly
- d. On 22 April 1968, he accepted nonjudicial punishment for absent without leave (AWOL).
- e. A notice of Unauthorized Absence from the Army dated 31 July 1975 shows the applicant was dropped from the rolls on 14 August 1968.
- f. On 14 August 1975, court-martial charges were preferred on the applicant for being AWOL. The available service record is void the DA Form 458. The applicant was duty status changed from present for duty to confinement (military).
- g. On 18 August 1975, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:
 - maximum punishment
 - he was guilty of the charges against him or of a lesser included offense
 - he does not desire further rehabilitation or further military service
 - if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Undesirable Discharge Certificate
 - he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
 - he may be deprived of his rights and benefits as a veteran under both Federal and State law
 - he may expect to encounter substantial prejudice in civilian life

h. On 28 August 1975, the applicant was duty status changed from confinement (military) to present for duty (released without trail)

i. On 8 September 1975, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge for the Good of the Service in lieu of trial by courts-martial. He would be issued an Under Other Than Undesirable Discharge Certificate and reduced to the lowest enlisted pay grade.

j. On 12 November 1975, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 5 months and 2 days of active service with 2670 days of lost time.

5. On 11 July 2008, the applicant was notified the Army Discharge Review Board (ADRB) reviewed his discharge processing, but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

6. By regulation, an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

7. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. He selected PTSD and 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 into the Regular Army on 23 January 1975.
- His DA Form 2-1, Personnel Qualification Record (PQR) shows he was absent without leave (AWOL) the following dates:
 - 31 March 1968 to 11 April 1968 (12 days)
 - 14 August 1968 to 11 January 1971 (891 days)
 - 23 January 1971 to 6 August 1975 (1657)
 - 14 August 1975 to 28 August 1975 (Confinement (Military))
- On 20 March 1968, he accepted nonjudicial punishment for the following specifications:
 - failure to obey a lawful order
 - failure to report

- drunk and disorderly
- On 14 August 1975, court-martial charges were preferred on the applicant for being AWOL. The available service record is void the DA Form 458. The applicant was duty status changed from present for duty to confinement (military).
- On 18 August 1975, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel).
- On 12 November 1975, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 5 months and 2 days of active service with 2670 days of lost time.
- On 11 July 2008, the applicant was notified the Army Discharge Review Board (ADRB) reviewed his discharge processing but found it proper and equitable. The ADRB denied his request for an upgrade of his discharge.

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 when his hand was first injured, he went to see the doctor. He was told that it was "ok boy, nothing is wrong with your hand". He told the doctor he was in pain, and they wrapped it and told me to go back to his unit. He was not given any medication. He suffered the whole weekend in pain. He went back to the doctor on Monday which is when he was told his hand was broken and a cast was put on his hand. He believes because he was a black man, he was discriminated against, he was not treated or given the proper pain medication on his first visit.

d. Due to the period of service, no active-duty electronic medical records were available for review. No hardcopy medical 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 no VA electronic medical records were available for review. However, JLV contains a problem list from civilian/community providers indicating various medical conditions but no evidence of any behavioral health treatment or diagnosis. The applicant did not submit any medical documentation post-military service substantiating his assertion of PTSD and 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 PTSD and 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. Although the applicant selected PTSD and OMH as related to his request, he did not provide a rationale or explanation of the behavioral health condition he was asserting. 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 selection of PTSD and 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 request, available military records and medical review, the Board concurred with the advising official finding insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge. The opine found no evidence of an in-service behavioral health diagnoses.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct of being AWOL for a total of 2670 days. The Board agreed there is no evidence supporting the applicant was experiencing any mental health condition while on active service, and his Joint Legacy Viewer (JLV) is void of any history of VA medical treatment. The Board noted, the applicant provided no post service achievements or character letters of support for the Board to consider a clemency determination. Furthermore, the Board agreed the applicant has not demonstrated by a preponderance of evidence an error or injustice warranting the

requested relief, specifically an upgrade of the under other than honorable conditions (UOTHC) discharge to a honorable discharge. Therefore, the Board denied relief.

3. The applicant's request for a personal appearance hearing was carefully considered. In this case, the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

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.

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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), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a (Honorable Discharge) states an honorable discharge is a separation with honor. 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 (General Discharge) states a general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.

3. 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.

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 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.

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//