

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 9 December 2024

DOCKET NUMBER: AR20240005836

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) characterization of service, and to appear before the Board either in person at his own expense or via video/telephone.

APPLICANT'S SUPPORTING DOCUMENTS CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Self-authored statements (2)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code (USC), 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 his trouble began when he was in the Georgia Army National Guard (GAARNG) and his unit was activated for the flood of 1994 in Albany, GA. They were responsible for rescuing people from the flooded areas. They also had to deal with bodies and caskets that began floating up from the cemetery by gathering them and storing them in freezer trucks. One night, an old lady begged him and another Soldier to please go and get her son who was lost in the water, but they had direct orders to return back to command so, they did not help her. He later learned her son was found deceased. Things did not bother him at the time because they had to help the community and he enjoyed being a Soldier.

a. In 1995, he joined the U.S. Navy, happily married his wife, and was expecting a son. His wife experienced a medical difficulty, went into early labor, and the child did not survive. He and his wife were young, and it tore their marriage apart. She returned home until he was honorably discharged from the Navy in 1997.

b. Later In 1997, he enlisted in the GAARNG again. His wife became pregnant again and the doctors said they had a plan to enable her to carry the baby to full term. They followed the doctors' orders, but the baby was still born early. He decided to enlist

in the Regular Army and while he was awaiting orders his son became ill and died from Respiratory Syncytial Virus before he reported to this unit. He buried his son and reported for duty at Fort Polk, LA, where he served alone from 1998 to 1999.

c. His wife came Fort Polk for a visit and became pregnant again. He visited his family in Georgia and had a breakdown. He put his whole family out of the house and was going to commit suicide. If it was not for his brother, his life would have ended then. He left his wife home with her parents to get the help she needed for the pregnancy until the baby was born. They were happy and he was driving back and forth between Fort Polk, LA and Albany, GA. He went home on weekend and his daughter became nonresponsive, had to be rushed to the hospital, and was in a coma for two weeks. Then he and his wife had the same issue with their daughter, but thankfully she was saved.

d. He called his unit to let his Command Sergeant Major (CSM) know what had happened and was told he had to be back in three days, no exception. He told the CSM he could not leave his daughter and the CSM told him to do what he had to do. The applicant returned on the third day and the CSM called him into his office and asked if he wanted to be in the Army. He said yes and the CSM said he must prove it to him, or he would be put out.

e. The applicant's family was stuck in Albany, GA due to a doctor not clearing his child to leave the state. His child was moved to a hospital in Atlanta, GA. As a result, his wife and children were homeless and living with a relative, which put a strain on their family. The drive back and forth from Fort Polk, LA to GA to comfort his family took a toll on him. The Red Cross arranged for him to work at a recruiting station closer to his family while his request for a compassionate reassignment was being processed. Under the pressure of family issues and trying to be the best Soldier he could be, he made a bad judgment call and requested compassionate reassignment to Fort Polk, LA instead of a duty station in GA.

f. Ultimately, the applicant had to make the difficult choice to either remain at his duty station or go assist his family. He chose to assist his family and as a result, he lost everything, his wife, kids, and career. He knew he was wrong, but he could not leave his kids behind and no matter how much he reached out for help it seemed like the command just did not care. Going absent without leave (AWOL) was one of the things he regrets most in his life. He deeply regrets his decision because it brought discredit on his unit and the Army Values he had sworn to uphold. However, the Army also failed to meet its own standards regarding support of Soldiers managing family crises and personal loss.

g. The applicant indicates on his DD Form 149 that a mental health condition is related to his request.

3. A National Guard Bureau (NGB) Form 22 (Report of Separation and Record of Service) shows the applicant had an honorable period of service in the GAARNG from 18 June 1993 until 22 July 1995 when he was discharged for the purpose of enlistment in the Armed Forces. Presumably, this is when he enlisted in the U.S. Navy.

4. An NGB Form 22 shows the applicant had an honorable period of service in the GAARNG from 27 July 1997 to 28 January 1998 when he was discharged for the purpose of enlistment in the Armed Forces.

5. On 29 January 1998, the applicant enlisted in the Regular Army for a period of 3 years in the rank/grade of specialist (SPC)/E-4. He was assigned to a unit at Fort Polk, LA.

6. The applicant's duty status was changed as follows:

- from Present for Duty (PDY) to Absent Without Leave (AWOL) effective 24 March 1999
- from AWOL to Dropped from Rolls (DFR) and reported as a deserter effective 23 April 1999
- from DFR to PDY/Returned to Military Control effective 14 April 2000 when he was apprehended by civil authorities

7. A DD Form 458 (Charge Sheet) shows on 24 April 2000, court-martial charges were preferred against the applicant for violation of the Uniform Code of Military Justice (UCMJ) for being AWOL from on or about 24 March 1999 to on or about 16 April 2000.

8. On 24 April 2000, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations - Enlisted Personnel), Chapter 10, in lieu of trial by court-martial. He consulted with legal counsel and was advised of the basis for the trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of a UOTHC discharge; and the procedures and rights that were available to him. He elected not to submit any statements in his own behalf.

9. On 8 May 2001, the applicant's immediate commander recommended approval of his request for discharge with his service characterized as UOTHC.

10. On 31 July 2001, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. He directed his service be characterized as UOTHC, and further directed that the applicant be reduced to the lowest enlisted grade prior to execution of the discharge.

11. Orders and the applicant's DD Form 214 (Certificate of Release or Discharge from Active Duty) show he was discharged on 29 August 2001, under the provisions of Army Regulation 635-200, Chapter 10, by reason of "In Lieu of Trial By Court-Martial" with Separation code "KFS" and Reentry code "4." His service was characterized as UOTHC. He was credited with completing 2 years, 6 months, and 2 days of net active service this period. He had time lost due to AWOL from 24 March 1999 to 15 April 2000. He did complete his first full term of service.

12. The applicant petitioned the Army Discharge Review Board (ADRB) for relief. On 30 June 2009, the applicant was informed that after careful review of his application, military records and all other available evidence, the ADRB determined that he was properly and equitably discharged and denied his request.

13. Army Regulation 635-200 states a Chapter 10 is a voluntary discharge request in-lieu of trial by court-martial. In doing so, he would have waived his opportunity to appear before a court-martial and risk a felony conviction. A characterization of UOTHC is authorized and normally considered appropriate.

14. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition. By regulation, an applicant is not entitled to a hearing before the Board.

15. MEDICAL REVIEW:

a. Background: The applicant is applying to the ABCMR requesting consideration of an upgrade to his under other than honorable conditions (UOTHC) characterization of service. He contends he experienced an undiagnosed mental health condition that mitigates 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:

- The applicant enlisted into the Regular Army on 29 January 1998 following a period of time in the Georgia Army National Guard.
- A Charge Sheet showed that the applicant had court-martial charges preferred against him for being AWOL from 24 March 1999 to 16 April 2000. He requested discharge in lieu of trial by court-martial, which was approved.
- The applicant was discharged on 29 August 2001, and he was credited with completing 2 years, 6 months, and 2 days of net active service.

b. Review of Available Records: The Army Review Board Agency (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant provides a lengthy explanation about the family related events leading up to his misconduct, and he indicated a mental health condition as a mitigating factor. He

described the deaths of two infant sons and the hospitalization of his infant daughter, and he explained that he made the difficult decision to be with his family and went AWOL. The application was void of any medical or mental health records. There was insufficient evidence that the applicant was diagnosed with a psychiatric condition while on active service.

c. 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. 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. 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 at the time of the misconduct. There were no medical or mental health records included in the application, and JLV showed no history of any mental health related conditions.

(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 applicant provides a lengthy explanation of traumatic events related to the loss of infant children, which led up to his decision to be AWOL, and being AWOL can be a natural sequela to experiencing traumatic or stressful events. However, there is no documentation of any mental health symptoms or diagnoses. There is insufficient evidence, beyond self-report, that the applicant was experiencing a mental health condition while on active service. However, the applicant contends he had a mental health condition or an experience that mitigated his misconduct, and per Liberal Consideration his contention is sufficient for the board's consideration.

BOARD DISCUSSION:

1. The Board further determined the evidence presented is insufficient to warrant a portion of the requested relief. As a result, the Board recommends denial of so much of the application that pertains to upgrading his discharge.

2. 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 request, supporting documents, evidence in the records, and published DoD guidance for liberal consideration of discharge upgrade requests. The evidence shows the applicant was charged with commission of an

offense (AWOL) punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of AR 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial. The Board found no error or injustice in his separation processing. The Board also considered the medical records, any VA documents provided by the applicant and the review and conclusions of the medical reviewing official. The Board concurred with the medical official's finding insufficient evidence to support that the applicant had a condition or experience that mitigates his misconduct. Also, the applicant provided insufficient evidence of post-service achievements in support of a clemency determination. Therefore, based on a preponderance of available evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

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.

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, USC, Section 1552(b), provides that applications for correction of military records must be filed within three 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 three-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.
2. Title 10, USC, Section 1556, provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.
3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing. 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.
4. 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 stated a member who committed an offense or offenses for which the authorized punishment included a punitive discharge could, at any time after the charges have been preferred, submit a request for discharge for the good of the service in lieu of trial by court-martial. Although an honorable or general discharge was authorized, a discharge under other than honorable conditions was normally considered appropriate. At the time of the applicant's separation the regulation provided for the issuance of an UOTHC discharge.
 - 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.

d. When a Soldier was to be discharged UOTHC, the separation authority would direct an immediate reduction to the lowest enlisted grade.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR) 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 UOTHC 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; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are 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 misconduct that led to the discharge.

7. 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, 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//