

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 28 February 2025

DOCKET NUMBER: AR20240005890

APPLICANT REQUESTS:

- his under other than honorable conditions (UOTHC) discharge be upgraded to an honorable discharge
- personal appearance hearing before the Board via video/telephone

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

- DD Form 149 (Application for Correction of Military Record)
- Six Certificates and or Diplomas, 9 May 1998 – 30 August 2020
- Six Character Reference Letters, 16 September 2019 – 26 March 2024
- Department of Veterans Affairs (VA) Letter, 21 August 2024

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 his conduct has improved and he is a productive member of society. A Caucasian Soldier made racial threats to his life that caused him stress and anxiety.
3. The applicant provides:
 - a. Six certificates including, a Bachelor of Arts in Social Science, an Associate of Applied Science in Culinary Arts, Biblical Studies Diploma, Certificate of Ordination, and Culinary Certification.
 - b. Six reference statements that attest to the applicant's character.
4. The applicant's service record shows:

a. The applicant enlisted in the Regular Army on 7 January 1972.

b. The applicant accepted non-judicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on the following dates for the indicated offenses:

- on 24 March 1972, for being derelict in the performance of his duties by failing to stay awake on fireguard, on or about 21 March 1972
- on 7 April 1972, for absenting himself from his unit on or about 1800 hours, 4 April 1972 until 2245 hours, 4 April 1972

c. Before a special court-martial on or about 2 May 1972, at Fort Polk, Louisiana, the applicant was found guilty of assaulting another Soldier on or about 9 April 1972.

d. On 9 May 1973, court-martial charges were preferred against the applicant. The DD Form 458 (Charge Sheet) shows he was charged with being absent without leave from on or about 4 December 1972 until on 2 May 1973.

e. On 14 May 1973, subsequent to receiving legal counsel, the applicant voluntarily requested discharge, under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws. He was afforded the opportunity to submit a statement in his own behalf.

f. On 17 May 1973, the applicant's commander recommended approval of his discharge request and the issuance of an undesirable discharge. His intermediate commander endorsed the request on 18 May 1973.

g. On 22 May 1973, consistent with the chain of command recommendations, the separation authority approved the applicant's request for discharge in lieu of trial by court-martial. The applicant was already serving in the lowest enlisted grade and would be issued an UOTHC discharge.

h. On 29 May 1973, the applicant was discharged under the provisions of Army Regulation 635-200, Chapter 10, with Separation Program Number 246 (discharge for the good of the service). His DD Form 214 confirms he was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was credited with completing 11 months and 24 days of net active service.

5. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions (UOTHC) discharge to an honorable. He selected OMH on his application 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 7 January 1972.
- Applicant accepted non-judicial punishment (NJP), under the provisions of Article 15 of the Uniform Code of Military Justice (UCMJ), on the following dates for the indicated offenses:
 - on 24 March 1972, for being derelict in the performance of his duties by failing to stay awake on fireguard, on or about 21 March 1972
 - on 7 April 1972, for absenting himself from his unit on or about 1800 hours, 4 April 1972 until 2245 hours, 4 April 1972
- Before a special court-martial on or about 2 May 1972, at Fort Polk, Louisiana, the applicant was found guilty of assaulting another Soldier on or about 9 April 1972.
- On 9 May 1973, court-martial charges were preferred against the applicant. The DD Form 458 (Charge Sheet) shows he was charged with being absent without leave from on or about 4 December 1972 until on 2 May 1973.
- On 29 May 1973, the applicant was discharged under the provisions of Army Regulation 635-200, Chapter 10, with Separation Program Number 246 (discharge for the good of the service). His DD Form 214 confirms he was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was credited with completing 11 months and 24 days of net active service.

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 his conduct has improved and he is a productive member of society. A Caucasian Soldier made racial threats to his life that caused him stress and anxiety.

d. Due to the period of service no active-duty electronic medical records were available for review. The applicant submitted hardcopy documentation of a medical examination for the purpose of separation, dated 10 May 1973, indicating no mental health concerns and the applicant denied any issues with anxiety, depression, or trouble sleeping. Contrary to the applicant's statement of racial threats to his life causing him stress and anxiety, at the time of discharge, a statement from his defense counsel

during his proceeding indicates the applicant's frustration with not receiving expected promotions and financial hardships as issues related to his discharge.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and there is no evidence he has been diagnosed with or has participated in treatment of any behavioral health condition.

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 asserted OMH on his application 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 post-discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected OMH on his application as related to his request, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses and the VA has not service-connected the applicant for any BH condition. In addition, the VA electronic record indicates the applicant has not been diagnosed or treated for any mental health condition. And while the applicant selected OMH on his application, he did not provide any medical documentation substantiating any BH diagnosis.

h. Per Liberal Consideration guidelines, his selection 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. One potential outcome was to grant partial relief with an upgrade to general under honorable conditions based on the applicant's post service achievements and character letters of support. However, upon review of the applicant's request, 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 asserted OMH on his application 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 post-discharge.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. Although the applicant selected OMH on his application as related to his request, there is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses and the VA has not service-connected the applicant for any BH condition. In addition, the VA electronic record indicates the applicant has not been diagnosed or treated for any mental health condition. And while the applicant selected OMH on his application, he did not provide any medical documentation substantiating any BH diagnosis.

3. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the misconduct that would warrant an upgrade of the applicant's discharge to honorable. The Board commends the applicant's post-service achievements including multiple academic and vocational certificates and six-character reference letters reflect commendable personal growth and a commitment to becoming a productive member of society. The Board acknowledged these accomplishments and the applicant's assertion that his conduct has improved since discharge. The applicant completed only 11

months and 24 days of his enlistment, and his record includes multiple disciplinary actions, including two nonjudicial punishments, a special court-martial conviction for assault, and an extended period of unauthorized absence lasting nearly five months.

4. The Board noted the applicant's serious infractions led to his voluntary request for discharge in lieu of trial by court-martial, which was approved and resulted in a UOTHC characterization. While the applicant alleges that racial threats contributed to his stress and anxiety, no contemporaneous evidence was provided to substantiate this claim or to show that such circumstances mitigated his misconduct. The Board is bound to evaluate the applicant's service as documented and found the characterization at discharge was appropriate. Therefore, relief is denied.

5. 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:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	XXX	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
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 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 considers individual applications that are properly brought before it. The ABCMR will decide cases on the evidence of record; it is not an investigative body. The Board 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. The ABCMR members will direct or recommend changes in military records to correct the error or injustice, if persuaded that material error or injustice exists and that sufficient evidence exists in the record. 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.
3. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. 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. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to Soldiers whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 provided that a member who committed an offense or offenses under the UCMJ, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service at any time after court-martial charges were preferred. Commanders would ensure that an individual was not coerced into submitting a request for discharge for the good of the service. Consulting counsel would advise the member concerning the elements of the offense or offenses, the type of discharge normally given under the provisions of this chapter, the loss of Department of Veterans Affairs benefits, and the possibility of prejudice in civilian life because of the characterization of such a discharge. An UOTHC discharge was normally considered appropriate.

4. 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 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.

5. 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.

6. 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//