

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 February 2025

DOCKET NUMBER: AR20240005932

APPLICANT REQUESTS: an upgrade of his undesirable discharge.

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) in lieu of DD Form 149 (Application for Correction of Military Record under the Provisions of Title 10, U.S. Code, Section 1552)
- National Personnel Records Center Letter, 26 April 2017
- DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) for the period ending 11 May 1970
- Department of Veterans Affairs (VA) Letter, 18 December 2019

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 discharge was due to being young and being away from home for the first time. He was having great difficulty with his home sickness and went as far as leaving his duty station to get back home. He regrets his decision at the time and now asks for the Board's consideration in this matter.
3. On his DD Form 293, the applicant indicates other mental health is related to his request, as a contributing and mitigating factor in the circumstances that resulted in his separation.
4. He was inducted in the Army of the United States on 17 July 1968. He was subsequently assigned to Fort Gordon, GA for his initial entry training on 25 July 1968.
5. Special Court-Martial Order Number 335, issued by Headquarters Special Troops, U.S. Army School/Training Center and Fort Gordon, GA, adjudged on 24 March 1969, shows he pleaded guilty and was found guilty of violating Article 86 of the Uniform Code

of Military Justice (UCMJ); specifically, he went absent without leave (AWOL) from on or about 7 November 1968 through 27 February 1969 (a period of 113 days).

6. The sentence was approved and ordered to be executed on 27 March 1969, but the execution of the portion of adjudging confinement at hard labor for 5 months, is suspended for 5 months, at which time, unless the suspension is sooner vacated, the suspended portion of the sentence will be remitted without further action.

7. Special Court-Martial Order Number 196, issued by Headquarters Brigade (Provisional), U.S. Army School/Training Center and Fort Gordon, GA on 9 June 1969, ordered the suspended sentence of confinement at hard labor for 5 months in Special Court-Martial Order Number 335 be vacated. The unexecuted portion of the sentence to confinement at hard labor will be duly executed. (Applicant) will be confined in the Center Stockade, Fort Gordon and the confinement will be served therein, or elsewhere as competent authority may direct.

8. Special Court-Martial Order Number 275, issued by Headquarters Brigade (Provisional), U.S. Army School/Training Center and Fort Gordon, GA on 20 June 1969, shows he pleaded guilty and was found guilty of violating Article 86 of the UCMJ; specifically, while a member of the Correctional Holding Detachment, Fort Gordon, he went AWOL from on or about 12 April 1969 through 27 May 1969 (a period of 46 days).

9. The sentence was adjudged on 17 June 1969; his sentence consisted of confinement at hard labor for 2 months and one previous conviction was considered. The sentence was ordered to be executed on 20 June 1969.

10. Special Court-Martial Order Number 732, issued by U.S. Army Correctional Training Facility, Fort Riley, KS on 20 August 1969 and effective 28 August 1969, ordered all the unexecuted portions of his sentence to confinement at hard labor be suspended until 29 September 1969.

11. Headquarters, U.S. Army School/Training Center and Fort Gordon Special Orders Number 15, dated 15 January 1970 shows he was returned to military control from AWOL status, and having been dropped from the rolls of the organization is assigned and confined to the post stockade effective 7 January 1970.

12. Special Court-Martial Order Number 80, issued by Headquarters Special Troops, U.S. Army School/Training Center and Fort Gordon, GA on 30 January 1970, shows he was found guilty of violating Article 86 of the UCMJ; specifically, while a member of Detachment 1, Special Processing Detachment, Fort Gordon, GA, he went AWOL from on or about 7 October 1969 through 7 January 1970 (a period of 93 days).

13. The sentence was adjudged on 27 January 1970; his sentence consisted of confinement at hard labor for 3 months and a forfeiture of \$30 pay for 3 months. The sentence was approved and ordered to be executed on 30 January 1970.

14. Special Court-Martial Order Number 198, issued by Headquarters Special Troops, U.S. Army School/Training Center and Fort Gordon, GA on 4 March 1970, shows he pleaded not guilty and was found not guilty of violating Article 128 of the UCMJ; specifically, while a member of the Correctional Holding Detachment, Fort Gordon, GA, in that he did, on or about 19 January 1970, unlawfully strike another Soldier in the head, and upper portions of the body with his fists. The finding of not guilty was announced on 20 February 1970.

15. He underwent a psychiatric evaluation by a licensed psychiatrist on 12 March 1970, to determine his mental condition prior to the commencement of administrative separation actions. The medical professional that performed the evaluation stated the following:

a. There is no evidence of any mental condition which would warrant consideration of treatment, hospitalization, or other disposition via medical channels.

b. He was and is mentally responsible, able to distinguish right from wrong and to adhere to the right, and he has the mental capacity to understand and participate in administrative procedures deemed appropriate by the command.

c. The findings were determined there is no evidence of psychiatric illness. He was psychiatrically cleared for any administrative action deemed appropriate by command.

16. The applicant's immediate commander notified him on 13 March 1970 of his intent to initiate separation actions against him in accordance with Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability) by reason of unfitness. His commander recommended he receive an undesirable discharge. The applicant acknowledged receipt on the same day.

17. The applicant consulted with legal counsel on 16 March 1970, and was advised of the basis for the contemplated separation action, his right to present his case before a board of officers, to submit a statement in his own behalf, and to be represented by counsel. He elected to waive his rights. He also indicated he understood he might expect to encounter substantial prejudice in civilian life by reason of a general discharge under honorable conditions. He also acknowledged he understood he might be ineligible for many or all benefits as a veteran under both Federal and State laws and that he might expect to encounter substantial prejudice in civilian life as a result of an undesirable discharge under conditions other than honorable.

18. On 17 March 1970, his immediate commander recommended that he be separated from the service under the provision of Army Regulation 635-212, by reason of unfitness, citing his conduct and disciplinary records and his three convictions by special courts-martial for AWOLs and he also received punishment under Article 15.

19. On 23 March 1970, the separation authority approved the applicant's discharge under the provisions of Army Regulation 635-212 and directed the issuance of an Undesirable Discharge Certificate.

20. Special Court-Martial Order Number 288, issued by Headquarters Special Troops, U.S. Army School/Training Center and Fort Gordon, GA on 25 March 1970, shows the unexecuted portion of his approved sentence to confinement at hard labor for 3 months was suspended effective the date of his release from military service.

21. The applicant was discharged on 11 May 1970 under the provisions of Army Regulation 635-212 by reason of unfitness (frequent involvement in incidents of discreditable nature with civil or military authorities). His DD Form 214 confirms he completed 6 months and 3 days of total active service. He accrued 418 days of lost time during his period of active service, he received an under other than honorable conditions characterization of service upon his discharge, and he was issued an Undesirable Discharge Certificate.

22. The applicant's available record does not contain evidence, nor does he provide any evidence that shows he was physically or emotionally abused or sought treatment from medical authorities for any medical condition or accident during his period of active service.

23. The applicant applied to the Army Discharge Review Board (ADRB) for an upgrade of his discharge. The ADRB reviewed his request on 8 June 1971, determined his discharge was both proper and equitable and denied his request for an upgrade.

24. He provides a VA letter, 18 December 2019 that reviewed his application for enrollment and indicated he did not meet the established criteria by law to receive medical treatment through the VA due to him receiving a characterization of service as "other than honorable or dishonorable."

25. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his other than honorable conditions discharge. The applicant contends his request is related to his experience of mental health disorders that impacted the circumstances of his discharge. 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 was

inducted into the Army of the United States on 17 July 1968; 2) The applicant was found guilty under special court-martial on three separation occasions between 24 March 1969 and 30 January for going AWOL for extended periods of time (113 days, 46 days, and 93 days); 3) The applicant was discharged on 11 May 1970 by reason of unfitness (frequent involvement in incidents of discreditable nature with civil or military authorities). He completed 6 months, and 3 days of net active service with 418 days of lost time. His military service was characterized as under other than honorable conditions.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the available supporting documents and the available military service and medical records. The VA's Joint Legacy Viewer (JLV) was also reviewed. No additional medical documentation was provided for review. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced mental health conditions which impacted his conduct resulting in his discharge. There is insufficient evidence that the applicant reported or was diagnosed with a mental health condition while on active service. The applicant underwent a mental health separation examination on 12 March 1970. During this evaluation, the applicant was not diagnosed with a mental health condition and was cleared from a psychiatric perspective to participate in the administrative proceedings.

d. The VA's Joint Legacy Viewer (JLV) was examined, and no results were found. The applicant has not been diagnosed with a service-connected mental health condition at this time, and he does not receive any service-connected disability.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence the applicant has been diagnosed with a mitigating mental health condition. The applicant contends that his repeated misconduct was the result of "homesickness." However, there was no indication at this time that there was any evidence of a diagnosable mental health condition at the time of service that would mitigate his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing mental health conditions that mitigate the misconduct leading to his separation.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced a mental health condition at the time of his active service that mitigates his misconduct.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, the applicant contends he experienced mental health conditions during his time in active service. However, there is insufficient evidence beyond self-report that the applicant was diagnosed with any mental health conditions during his time in service. The applicant did repeatedly go AWOL for extended periods of time, and this type of avoidant behavior can be a natural sequelae for some mental health conditions. However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he experienced mental health condition or experience while on active service, which mitigates his misconduct. The applicant's assertion is sufficient for consideration per the Liberal Consideration Policy.

BOARD DISCUSSION:

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 Department of Defense guidance for liberal consideration of discharge upgrade requests. The Board considered the applicant's statement and record of service, the frequency and nature of the applicant's misconduct and the reason for separation. The applicant was separated for unfitness with the commander citing frequent involvement in incidents of discreditable nature with civil or military authorities. The Board found no error or injustice in the separation proceedings under the regulation and subsequent characterization of service assigned at separation. Based upon the misconduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration, the Board determined relief was not warranted.

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant contends he was experiencing mental health conditions that mitigate the misconduct leading to his separation.

(2) Did the condition exist or experience occur during military service? Yes, the applicant contends he experienced a mental health condition at the time of his active service that mitigates his misconduct.

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However, the presence of misconduct is not sufficient evidence of the presence of a mental health condition. Yet, the applicant contends he experienced mental health condition or experience while on active service, which mitigates his misconduct. The applicant's assertion is sufficient for consideration per the Liberal Consideration Policy.

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.

6/6/2025

X

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. 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 ABCMR applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 635-200 (Active Duty Enlisted Administrative Separations) sets forth the basic policy 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.

4. Army Regulation 635-212 (Personnel Separations – Discharge – Unfitness and Unsuitability), then in effect, set forth the policy for administrative separation for unfitness. It provided, in pertinent part, that individuals would be discharged by reason of unfitness when their records were characterized by one or more of the following: frequent incidents of a discreditable nature with civil or military authorities, sexual perversion, drug addiction, an established pattern of shirking, and/or an established pattern showing dishonorable failure to pay just debts. This regulation also prescribed that an undesirable discharge was normally issued unless the particular circumstances warranted a general or an honorable discharge.

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 Discharge Review Boards (DRB) and Boards for Correction of Military/Naval Record (BCM/NR) when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including Post-Traumatic Stress Disorder; 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. The Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs on 25 July 2018, 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 court-martial forum. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to any other corrections, including changes in a discharge, which may be warranted on equity or relief from injustice grounds.

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//