

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 February 2025

DOCKET NUMBER: AR20240006235

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Veterans Affairs (VA) Form 21-10210 (Lay/Witness Statement) – 2
- VA decision letter
- News Article (digital image)
- 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's brothers' state, in pertinent part, the applicant has never been the same since his return from the Army. His temperament and personality were different. Before joining the Army, he was fun, energetic, and full of life.
3. On his DD Form 149, the applicant notes post-traumatic stress disorder (PTSD) issues are related to his request.
4. On 4 September 1973, the applicant enlisted in the Regular Army, for 3 years. The highest grade he attained was E-2.
5. On 25 April 1974, the applicant underwent a psychiatric evaluation. The Psychology Assistant noted, the applicant appeared to have poor judgment due to impulsivity, and inability to tolerate normal frustration. There was no evidence of psychosis or severe neurosis. The applicant was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.

6. On 7 May 1974, the applicant accepted non-judicial punishment under Article 15 of the Uniform Code of Military Justice, for possessing marijuana, on or about 2 May 1974. His punishment included forfeiture of \$75.00 per month for two months and 14 days extra duty.
7. On 10 June 1974, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military control on 22 June 1974.
8. Before a special court-martial on 31 July 1974 at Fort Hood, TX, the applicant was found guilty of one specification of going AWOL from on or about 10 June 1974 until 22 June 1974; and one specification of disobeying a lawful order from his superior noncommissioned officer (NCO), on or about 25 June 1974.
9. The court sentenced him to perform hard labor without confinement for 30 days, forfeiture of \$200.00 a month for one, and 30 days restriction. The sentence was approved on 13 August 1974.
10. On 2 August 1974, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
11. The applicant's commander notified the applicant on 21 August 1974, that he was being considered for elimination from the service for unfitness under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), paragraph 13-5a(1).
12. The applicant's commander formally recommended his separation under the provisions of Army Regulation 635-200, Chapter 13 for unfitness. As the specific reasons, the applicant's commander noted his frequent incidents of a discreditable nature with civil authorities or military authorities, unauthorized use or possession of marijuana, and established pattern for shirking.
13. On 22 August 1974, the applicant acknowledged that he had been advised by counsel of the contemplated separation action, the possible effects of the discharge, and the rights available to him. Following his consultation, he waived his right to have his case considered by a board of officers. He understood that as a result of issuance of an undesirable discharge UOTHC, he may be ineligible for many or all benefits as a Veteran under Federal and State laws as a result, and that he may expect to encounter substantial prejudice in civilian life. He submitted a statement in his own behalf, stating before he went AWOL, he had told his Commander that he was having issues with an NCO. Nothing had been done about it, and the applicant got tired with the daily harassment.

14. Consistent with the chain of command's recommendations, the separation authority approved the applicant's discharge on 10 September 1974, and directed issuance of a DD Form 258A (Undesirable Discharge Certificate).

15. The applicant was discharged on 23 September 1974. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, paragraph 13-5a(1). His service was characterized as UOTHC. He was assigned Separation Program Designator code JLB and Reenlistment Codes 3, 3B. He completed 1 year and 8 days of net active service this period with 12 days of lost time.

16. The applicant provides:

a. A VA decision letter that shows he was denied service connection for treatment purposes for PTSD. There was a PTSD diagnosis; however, there was no link to his military service.

b. A news article that details the shooting death of a 11 year old boy, which occurred in Texarkana, TX.

17. The applicant petitioned the Army Review Discharge Board (ADRB) requesting upgrade of his UOTHC discharge. On 26 May 1976, the Board voted to deny relief and determined his discharge was both proper and equitable.

18. The applicant petitioned the ADRB a second time, requesting upgrade of his UOTHC discharge. On 8 August 1985, the Board voted to deny relief and determined his discharge was both proper and equitable.

19. In reaching its determination, the Board can consider the applicant's petition, his arguments and assertions, and his service record in accordance with the published equity, injustice, or clemency guidance.

20. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions discharge to an honorable discharge. He contends he experienced PTSD 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: 1) The applicant enlisted in the Regular Army on 04 September 1973; 2) On 7 May 1974, the applicant accepted NJP for possessing marijuana; 3) On 31 July 1974, during a special court-martial proceeding, the applicant was found guilty of one specification of going AWOL from 10 June 1974 to 22 June 1974 and one specification of disobeying a lawful order on 25 June 1974; 4) The applicant was discharged on 23 September 1974 for unfitness due to frequent incidents

of a discreditable nature with civil authorities or military authorities. He completed 1 year and 8 days of net active service with 12 days of lost time. His 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 applicant's available military service records and medical records. The VA's Joint Legacy Viewer (JLV) and hardcopy VA medical documentation provided by the applicant were also examined. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. The applicant asserts he experienced PTSD that mitigates his misconduct. There is insufficient evidence the applicant reported or was diagnosed with a mental health condition including PTSD while on active service. On 25 April 1974, the applicant underwent a psychiatric evaluation. The Psychology Assistant noted, the applicant appeared to have poor judgment due to impulsivity, and inability to tolerate normal frustration. However, the applicant was psychiatrically cleared to participate in any administrative action deemed appropriate by the command. The applicant also completed a Mental Status Evaluation on 02 August 1974. During this encounter, he was not diagnosed with a mental health condition and was found to have the capacity to understand and participate in board proceedings.

d. A review of JLV provided insufficient evidence the applicant has been diagnosed with a service-connected mental health condition including PTSD. However, he has sought care at the VA initially for medical and mental health care beginning on 18 March 2021. There was insufficient evidence that he has ever been diagnosed or treated for PTSD or that he has consistently participated in any mental health treatment. The applicant provided evidence that he was evaluated through a VA compensation and pension evaluation on 05 January 2022 which described that though PTSD may be present, this disorder was present prior to and not exacerbated by his military service. There was insufficient evidence that the applicant was ever treated for any mental health concerns while serving in the military. There was evidence in the applicant's VA medical records that he reported experiencing a traumatic event prior to his military service.

e. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a service-connected condition or experience that mitigates his misconduct.

f. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the misconduct? Yes, the applicant asserts he experienced PTSD, which mitigates his misconduct.

(2) Did the condition exist or experience occur during military service? Yes, the applicant asserts he experienced PTSD that mitigates his misconduct while on active service.

(3) Does the condition or experience actually excuse or mitigate the misconduct? No, the applicant contends he experienced PTSD during his time in active service. However, there is insufficient evidence beyond self-report that the applicant was experiencing PTSD during his time in service. The applicant did go AWOL, failed to follow orders, and utilized marijuana. This type of avoidant and erratic behavior can be a natural sequelae PTSD. 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 conditions 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:

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 petition, available military records and medical review, the Board concurred with the advising opinion of the Agency Medical Advisor that there is insufficient evidence to support the applicant had a service-connected condition or experience that mitigates his misconduct.

2. The Board noted the applicant's contentions that his post-service behavioral changes, as described by his brothers, and his diagnosis of post-traumatic stress disorder (PTSD) are linked to his military service. The Board acknowledged the applicant's family's observations and the PTSD diagnosis, the Department of Veterans Affairs determined there was no service connection for treatment purposes. The Board determined the applicant's brief period of active duty 1 year and 8 days with 12 days of lost time, and a service record marked by misconduct including unauthorized drug possession, repeated absences without leave, disobedience of lawful orders, and a pattern of shirking duties. Despite undergoing psychiatric evaluations, the applicant was found fit for administrative action and was afforded full due process, including legal

counsel and the opportunity to submit a statement in his own behalf. The Board found the applicant's discharge was proper and equitable, therefore, relief is denied.

3. Consideration was given to the Kurta Questions:

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BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	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. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by 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.
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the requirements for the administrative 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 a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 13 provided procedures and guidance for eliminating personnel found to be unfit or unsuitable for further military service. Action will be taken to separate an individual for unfitness when it is clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort is unlikely to succeed. Action will be taken to separate an individual for unsuitability when it is clearly established that it is unlikely that he will develop sufficiently to participate in further military training and/or become a satisfactory Soldier.

4. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Navy Records (BCM/NR), on 3 September 2014, to carefully consider the revised 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 Under Secretary of Defense for Personnel and Readiness provided clarifying guidance to Service DRBs and Service BCM/NRs on 25 August 2017. The memorandum directed them to give liberal consideration to veterans petitioning for discharge relief when the application for relief is based in whole or in part on matters relating to mental health conditions, including PTSD, Traumatic Brain Injury, sexual assault, or sexual harassment. Standards for review should rightly consider the unique nature of these cases and afford each veteran a reasonable opportunity for relief even if the mental health condition was not diagnosed until years later. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part on those conditions or experiences.

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//