

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 25 February 2025

DOCKET NUMBER: AR20240006492

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions characterization of service.

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Certificate of Release or Discharge from Active Duty), 17 September 1981
- Certificate of Completion, 28 January 2024
- Letter, Salvation Army Adult Rehabilitation Center, 1 April 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 the correction is needed, so he can receive Veterans Affairs healthcare.
3. The applicant provides:
 - a. A certificate of completion from The Salvation Army Adult Rehabilitation Center – Atlanta, GA, which shows he successfully completed the program requirements approved by The Salvation Army Territorial Headquarters on 28 January 2024.
 - b. A letter from the Program Director, Salvation Army Adult Rehabilitation Center, dated 1 April 2024, which states the applicant is a resident at the Salvation Army Adult Rehabilitation Center. He entered the program on 28 July 2023 and has done an outstanding job through all six levels of the program. He graduated the program and is now an employee of the Salvation Army.

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

a. He enlisted in the Regular Army on 25 July 1979. The highest rank/grade he held was private (PV2)/E-2.

b. On 13 June 1980, he accepted nonjudicial punishment (NJP) under Article 15, Uniform Code of Military Justice (UCMJ), for on or about 1 June 1980, assaulting PV2 M_, by striking him with his fist. His punishment included 7 days restriction, 7 days extra duty, and forfeiture of \$100.00, suspended for 60 days.

c. On 17 September 1980, he accepted NJP under Article 15, UCMJ for absenting himself from his place of duty from on or about 16 September 1980 to on or about 17 September 1980. His punishment included 7 days in Correctional Custody Facility and forfeiture of \$75.00.

d. He was counseled for the following:

- 22 December 1980 – breaking restriction
- 9 January 1981 – his noncommissioned officer (NCO) stated he was coming along, and he would be observing his job performance
- 21 February 1981 – failed to return from an overnight pass
- 1 April 1981 – failed to sign in off an overnight pass on time
- 6 April 1981 – was counseled by his first sergeant for failing to sign in off pass on 1 April 1981
- 27 April 1981 – failure to show up for guard duty and was seen in the village without having a pass or being signed out

e. On 30 April 1981, he accepted NJP under Article 15, UCMJ for on or about 26 April 1981, failing to go at the time prescribed to his appointed place of duty, to wit: guard duty and violating a lawful general regulation by failing to have in his possession an authorized liberty pass, while absent from the installation (Camp Stanley, Republic of Korea). His punishment included forfeiture of \$130.00 for one month, 14 days extra duty, and 14 days restriction.

f. He was counseled on 21 June 1981 for returning late from a pass by about eight hours.

g. On 29 June 1981, he accepted NJP under Article 15, UCMJ for without authority, absenting himself from his unit from on or about 21 June 1981 to on or about 21 June 1981.

h. On 8 July 1981, the applicant's immediate commander recommended that he be barred from reenlistment.

i. DA Form 2496-1 (Disposition Form) shows the bar to reenlistment was approved on 10 July 1981. The entry “Not recommended for further service” would be filed as a permanent part of the applicant’s 201 file.

j. The applicant’s duty status changed on the following dates:

- Present for Duty (PDY) to Absent Without Leave (AWOL) – 19 July 1981
- AWOL to PDY – 31 July 1981
- PDY to AWOL – 1 August 1981
- AWOL to PDY – 3 August 1981

k. DD Form 497 (Confinement Order), dated 3 August 1981, shows the applicant was placed in pretrial confinement for the following offenses and violating the following UCMJ Articles:

- Article 86 – AWOL (2 offenses)
- Article 89 – disrespect to a commissioned officer
- Article 90 - disobeying a lawful command (3 offense)
- Article 91 – disobeying an order and disrespect toward NCOs (4 offenses)
- Article 107 – false official statement
- Article 117 – using provoking words toward another servicemember
- Article 134 – disorderly in camp, communicating a threat, and breaking restriction

l. The applicant underwent a medical examination on 17 September 1981 for the purpose of separation. The examining official noted the applicant was qualified for separation.

m. The applicant’s service record does not contain the separation packet or the facts and circumstances pertaining to his chapter proceedings.

n. The applicant was discharged on 17 September 1981. His DD Form 214 shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), chapter 10, for administrative discharge – conduct triable by court-martial, in the rank/grade of private/E-1, and his service was characterized as under other than honorable conditions. He completed 2 years, 1 month, and 3 days of net active service during the covered period. This form also shows in:

- Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized): Army Service Ribbon, Sharpshooter Marksmanship Qualification Badge (rifle), and the Expert Marksmanship Qualification Badge (hand grenade)

- Item 26 (Separation Code): JFS
- Item 27 (Reenlistment Code): RE-3B
- Item 29 (Dates of Time Lost During This Period): 19 days

5. The Army Discharge Review Board denied the applicant's request for an upgrade on 15 April 1983.

6. The pertinent Army regulation in effect at the time provided discharges under the provision of Army Regulation 635-200, chapter 10, where voluntary requests from the Soldier to be discharged in lieu of a trial by court-martial.

7. The Board should consider the applicant's statements and overall record in accordance with the published equity, injustice, or clemency determination guidance.

8. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service. On his DD Form 149, the applicant indicated Posttraumatic Stress Disorder (PTSD) is related to his request. 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 (RA) on 25 July 1979, 2) he received an Article 15 on 13 June 1980 for assaulting another Soldier, 3) on 17 September 1980 the applicant received an Article 15 for absenting himself from his place of duty from on or about 16 September 1980 to on or about 17 September 1980, 4) he was counseled on six occasions between 22 December 1980 and 27 April 1981 for the following: breaking restriction, his noncommissioned officer (NCO) stated he would be observing his job performance, failing to return from an overnight pass, failing to sign in off an overnight pass on time, failing to sign in off pass, failure to show up for guard duty and was seen in the village without having a pass or being signed out, 5) the applicant received an Article 15 on 30 April 1981 for failing to go at the time prescribed to his appointed place of duty, to wit: guard duty and violating a lawful general regulation by failing to have in his possession an authorized liberty pass, while absent from the installation, 6) the applicant was counseled on 21 June 1981 for returning late from a pass by about 8 hours, 7) he received an Article 15 on 29 June 1981 for absenting himself from his unit, 8) a bar to reenlistment was approved on 10 July 1981, 9) the applicant's duty status changed on the following dates: Present for Duty (PDY) to Absent Without Leave (AWOL) – 19 July 1981, AWOL to PDY – 31 July 1981, PDY to AWOL – 1 August 1981, and AWOL to PDY – 3 August 1981, 9) DD Form 497 (Confinement Order), dated 3 August 1981, shows the applicant was placed in pretrial confinement for the following offenses and violating the following: AWOL (2 offenses), disrespect to a commissioned officer, disobeying a lawful command (3 offense), disobeying an order and disrespect toward NCOs (4 offenses), false official statement, using provoking words toward another

servicemember, disorderly in camp, communicating a threat, and breaking restriction, 10) the applicant underwent a medical examination on 17 September 1981 and was cleared for separation, 11) the applicant's service record does not contain the separation packet or the facts and circumstances pertaining to his chapter proceedings, 12) the applicant was discharged on 17 September 1981 under the provisions of AR 635-200, chapter 10, for administrative discharge – conduct triable by court-martial, with a separation code of JFS and reenlistment code of RE-3B, 13) The Army Discharge Review Board denied the applicant's request for an upgrade on 15 April 1983.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service and available medical records. The VA's Joint Legacy Viewer (JLV) was also examined. The electronic military medical record (AHLTA) was not reviewed as it was not in use during the applicant's time in service. Lack of citation or discussion in this section should not be interpreted as lack of consideration.

c. An in-service Report of Medical Examination dated 17 September 1981 for the purposes of separation shows item number 42, psychiatric, as 'normal' on clinical evaluation. The associated Report of Medical History dated 17 September 1981 shows he marked 'no' to the following BH-related items: depression or excessive worry, loss of memory or amnesia, or nervous trouble of any sort.

d. A review of JLV shows the applicant is 0% service-connected (for treatment purposes only) through the VA for Paralysis of Upper Radicular Nerve Group and Degenerative Arthritis of the Spine. He is not service-connected for any BH conditions. The applicant was seen by a Social Worker on 29 June 2005 to determine his eligibility status and was deemed ineligible for services.

e. As part of his application, the applicant included a certificate of completion from The Salvation Army Adult Rehabilitation Center dated 28 January 2024. A memorandum from the Program Director at the Salvation Adult Rehabilitation Center dated 01 April 2024 shows that he graduated from the program and was an employee of the Salvation Army.

f. Based on the available information, it is the opinion of the Agency Medical Advisor that there is insufficient evidence that the applicant had a condition or experience during his time in service that mitigated his misconduct. However, he contends that his misconduct was related to PTSD, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes, the applicant contends his misconduct was related to PTSD.

(2) Did the condition exist or experience occur during military service? Yes, per the applicant's assertion.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. A review of records was void of any BH diagnosis or treatment history for the applicant during or after service and he provided no medical documentation supporting his assertion of PTSD. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by PTSD and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to PTSD, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

BOARD DISCUSSION:

After reviewing the application and all supporting documents, to include the DoD guidance on liberal consideration when reviewing discharge upgrade requests, the Board determined relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. Based upon the relatively short term of honorable service completed prior to a lengthy pattern of misconduct leading to the applicant's separation, as well as the lack of mitigation for such misconduct found in the medical review, the Board concluded there was insufficient evidence of an error or injustice warranting a change to the applicant's characterization of service.

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. Army Regulation (AR) 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 provided that a Soldier who committed an offense or offenses, the punishment for which includes a bad conduct or dishonorable discharge, may submit a request for discharge for the good of the service. The discharge request may be submitted after court-martial charges are preferred against the Soldier, or, where required, after referral, until final action by the court-martial convening authority. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge for the good of the service. The Soldier will be given a reasonable time to consult with consulting counsel and to consider the wisdom of submitting such a request for discharge. After receiving counseling, the Soldier may elect to submit a request for discharge for the good of the service. The Soldier will sign a written request, certifying that they were counseled, understood their rights, may receive a discharge under other than honorable conditions, and understood the adverse nature of such a discharge and the possible consequences. A discharge under other than honorable conditions was normally appropriate for a Soldier who is discharged for the good of the service. However, the separation authority was authorized to direct a general discharge certificate if such was merited by the Soldier's overall record during their current

enlistment. For Soldiers who had completed entry level status, characterization of service as honorable was not authorized unless the Soldier's record was otherwise so meritorious that any other characterization clearly would be improper.

b. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier'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 used for a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

d. A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct or for the good of the service.

3. Army Regulation 635-5-1 (Personnel Separations - Separation Program Designator (SPD) Codes), in effect at the time, provided that enlisted Soldiers separated under the provisions of AR 635-200, chapter 10, with a narrative reason "Administrative discharge conduct triable by court-martial" would receive a separation code of JFS.

4. AR 601-210 (Active and Reserve Components Enlistment Program) covers eligibility criteria, policies, and procedures for enlistment and processing into the Regular Army, U.S. Army Reserve, and Army National Guard. Table 3-1 provides a list of RE codes.

- RE code "1" applies to Soldiers completing their term of active service, who are considered qualified for enlistment if all other criteria are met
- RE code "2" is no longer in use but applied to Soldiers separated for the convenience of the government, when reenlistment is not contemplated, who are fully qualified for enlistment/reenlistment
- RE code "3" applies to Soldiers who are not considered fully qualified for reentry or continuous service at time of separation, whose disqualification is waivable; they are ineligible unless a waiver is granted
- RE code "4" applies to Soldiers separated from last period of service with a non-waivable disqualification
- RE code "3B" applied to Soldiers who had lost time during their last period of service, who were ineligible for enlistment unless a waiver was granted
- RE code "3C" applied to Soldiers who had completed over 4 months of service who did not meet the basic eligibility pay grade requirements or who have been denied reenlistment under the Qualitative Retention Process and were ineligible for enlistment unless a waiver was granted.

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; TBI; sexual assault; sexual harassment. Boards were directed 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 that misconduct which led to the discharge.

6. 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 regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. Boards for Correction of Military/Naval Records 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. This guidance does not mandate relief but provides standards and principles to guide Boards in application of their equitable relief authority.

a. 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.

7. Section 1556 of Title 10, United States 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 Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

//NOTHING FOLLOWS//