

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 April 2025

DOCKET NUMBER: AR20240006549

APPLICANT REQUESTS:

- in effect, an upgrade of his under other than honorable conditions discharge
- a video/telephonic appearance before the Board

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

- DD Form 149 (Application for Correction of Military Record)
- DD Form 293 (Application for the Review of Discharge from the Armed Forces of the United States)
- Honorable Discharge Certificate
- DD Form 214 for the service period ending 21 March 1978
- Medical Records (13 pages)

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 he served in the U.S. Army from 10 May 1975 to 4 August 1987, and he is now an 83 year old man with regrets. He is very sick and has "little life left." An honorable discharge is required to use the Veterans' cemetery, and he is asking for "forgiveness."
3. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 7 May 1975.
 - b. His DA Form 2-1 (Personnel Qualification Record) shows he served in Korea during three periods:

- 18 August 1975 to 16 May 1977
- 16 July 1978 to 15 August 1978
- 5 November 1980 to 21 April 1983

c. A DD Form 458 (Charge Sheet) shows on 20 March 1987, court martial charges were preferred on the applicant for one specification of being absent without leave until apprehended from on or about 3 June 1983 to on or about 6 March 1987.

d. On 20 March 1987, the applicant consulted with legal counsel and requested a discharge for the good of the service under the provisions of Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10. The applicant's rank was listed as staff sergeant (SSG), E-6.

e. A DA Form 2496 (Disposition Form) shows the applicant's intermediate chain of command recommended approval with an under other than honorable conditions discharge.

f. On 25 June 1987, the separation authority approved the applicant's request for discharge for the good of the service. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted grade.

g. On 25 August 1987 he was discharged with an under other than honorable conditions. His DD Form 214 shows he completed 5 years, 7 months, and 27 days of active service with 2 years, 10 months, and 15 days of prior active service, and 1372 days (3 years, 9 months, and 3 days) of lost time. It also shows he was awarded or authorized:

- Army Service Ribbon
- Overseas Service Ribbon
- Army Good Conduct Medal
- Army Commendation Medal
- Marksman Marksmanship Qualification Badge with Rifle Bar (M-16)

4. A review of the applicant's record confirms an administrative entry was omitted from his DD Form 214. The entry will be added to his DD Form 214 as an administrative correction and will not be considered by the Board.

5. There is no evidence the applicant applied to the Army Discharge Review Board for review of his discharge within that board's 15-year statute of limitations.

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

7. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) discharge. On his DD Form 149, the applicant indicated Other Mental Health Issues are 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 on 07 May 1975, 2) A DD Form 458 shows court martial charges were preferred against the applicant on 20 March 1987 for one specification of being absent without leave (AWOL) from on or about 3 June 1983 to on or about 6 March 1987, 3) On 20 March 1987, the applicant consulted with legal counsel and requested a discharge for the good of the service under the provisions of AR 635-200, Chapter 10, 4) The applicant was discharged on 25 August 1987 under the provisions of AR 635-200, Chapter 10, with a separation code of KFS and reentry code of 'RE-3, 3B & 3C.'

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. There were no in-service medical records available for review.

d. A review of JLV was void of medical information. There is no documentation indicating the applicant is service-connected through the VA and there were no VA medical records available for review. It is of note that the applicant's UOTHC discharge renders him ineligible for VA services.

e. The applicant included civilian medical records as part of his application. The applicant included a letter from Virginia Franciscan Health dated 21 June 2022 showing he underwent a CT scan which showed "severe narrowing of the SMA, otherwise normal." It also noted gallstones and moderate extra hepatic duct dilation with a recommendation to obtain a metabolic panel to check his liver enzymes. A note from MultiCare Pulse Heart Institute dated 16 November 2022 shows the applicant underwent an evaluation for cardiac risk factors. A progress note from Nephrology dated 09 August 2021 shows the applicant's presenting problem as 'Kidney Problem' and noted that he has stage 3 chronic kidney disease (CKD). A printout from MyChart shows his diagnoses as Stage 3b chronic kidney disease, essential hypertension, Type 2 DM with CKD and hypertension, and Benign Prostatic Hyperplasia with Nocturia. The available medical documentation was void of any BH diagnosis or treatment history.

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 Other Mental Health Issues, 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 Other Mental Health Issues.

(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 Other Mental Health Issues. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

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. The Board noted in the absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues or to support an upgrade based on BH mitigation. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advisory official finding insufficient evidence of in-service mitigating factors to overcome the misconduct. The applicant provided no evidence of mental health diagnosis, post-service achievements, or letters of reference in support of a clemency determination. Based on a preponderance of evidence, the Board determined that the character of service the applicant received upon separation was not in error or unjust.

2. 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 Other Mental Health Issues.

(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 Other Mental Health Issues. In absence of documentation supporting his assertion there is insufficient evidence to establish his misconduct was related to or mitigated by Other Mental Health Issues and insufficient evidence to support an upgrade based on BH mitigation. However, he contends that his misconduct was related to Other Mental Health Issues, and, per liberal guidance, his assertion is sufficient to warrant the Board's consideration.

3. 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.

4. Prior to closing the case, the Board did note the analyst of record administrative notes below, and recommended the correction be completed to more accurately depict the military service of the applicant.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
XXX	XXX	XXX	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

Except for the correction addressed in Administrative Note(s) below, the Board found 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.

ADMINISTRATIVE NOTE(S):

A review of the applicant's records shows his DD Form 214 omitted administrative entries in the Remarks block. As a result, amend the DD Form 214 by adding in item 18 the entry "Continuous honorable active service from 19780322 to 19811021."

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 635-5 (Separation Documents), in effect at the time, states the DD Form 214 is a summary of the Soldier's most recent period of continuous active duty. It provides a brief, clear-cut record of all current active, prior active, and prior inactive duty service at the time of release from active duty, retirement, or discharge. The information entered thereon reflects the conditions as they existed at the time of separation. It states for item 18 (Remarks) to Soldiers who have previously reenlisted without being issued a DD Form 214 and are separated with any characterization of service except "Honorable", enter "Continuous Honorable Active Service from" (first day of service for which DD Form 214 was not issued) Until (date before commencement of current enlistment).
3. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. An honorable discharge is a separation with honor. 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 member whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.
 - c. Chapter 10 of this regulation states an individual who has committed an offense or offenses, the punishment for any of which includes a bad conduct discharge or dishonorable discharge, may submit a request for discharge for the good of the service. An Under Other than Honorable Discharge Certificate normally is appropriate for a member who is discharged for the good of the service.
 - d. Paragraph 10–6. Medical and mental examination provides that a medical examination is not required but may be requested by the Soldier under AR 40–501, chapter 8.

4. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) 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 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. 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, on 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 Discharge Review Boards and Boards for Correction of Military/Naval Records (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 based on 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.

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//