

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 17 March 2025

DOCKET NUMBER: AR20240006587

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 293 (Application for the Review of Discharge)
- Self-authored letter

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 there are extenuating reasons for his UOTHC discharge. Following completion of his initial active duty training, the racial harassment started. The environment was extremely hostile towards Hispanic Soldiers. They would create and use infractions to hinder the performance of his duties. He was injured in an offsite accident, the commander insisted he still perform duties although he was injured. The commander did not assign him to light duty, which would have afforded him recovery time. He was discharged without good cause. Under current laws such as the Americans with Disabilities Act, this type of discharge would not be allowed.

3. The applicant enlisted in New Jersey Army National Guard (ARNG) for 6 years, on 29 June 1979. He entered active duty for initial active duty training on 6 August 1979. He was issued a DD Form 214 (Certificate of Release or Discharge from Active Duty) for this period of service.

4. He was reported absent from his scheduled unit training assembly (UTA) or multiple UTAs on 21-22 February 1981, 14-15 March 1981, 20 September 1981, and 7-8 November 1981.

5. Via certified mail on 12 December 1981, the applicant's commander notified him that he had failed to attend 13 UTAs within a "one year period." Additionally, the applicant was declared an unsatisfactory participant and informed that his case was recommended for consideration by a board of officers to determine if he should be separated. The board would also determine whether he should be discharged immediately. Normally, separation under these circumstances is under conditions other than honorable. The applicant was not required or authorized to attend meetings or annual training while the discharge action was pending. By signature, the applicant confirmed receipt of the notification.
6. On 13 December 1981, the applicant's commander formally recommended his separation under the provisions of Army Regulation 135-91 (Army National Guard and Army Reserve – Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures), Paragraph 4-12, for unsatisfactory participation.
7. The available record is void of a record of proceedings confirming if a board of officers held a hearing to determine if the applicant should be separated.
8. Via certified mail on 17 April 1982, the applicant's commander notified him that actions were initiated to separate him under the provisions of Army Regulation 135-178 (Army National Guard and Army Reserve – Separation of Enlisted Personnel), and Army Regulation 135-91. He noted the applicant's unauthorized continued and willful absence from scheduled UTAs. The certified mail unclaimed by the applicant and "returned to sender."
9. The available record is void of the applicant's election of rights memorandum, and the separation authority's memorandum approving the recommended separation action.
10. New Jersey Department of Defense (NJDOD) Orders 107-24, issued by the New Jersey ARNG, discharged the applicant from the ARNG and assigned him to the U.S. Army Reserve (USAR) Control Group (Reinforcement) effective 3 June 1982, under the provisions of Army Regulation 135-178, Section VII, Chapter 7.
11. The applicant was discharged on 3 June 1982, and transferred to the USAR Control Group. His National Guard Bureau Form 22 (Report of Separation and Record of Service) confirms he was discharged under the provisions of NJDOD Orders 107-24. His service was characterized as UOTHC.
12. Orders D-10-910028, issued by USAR Personnel Center, St. Louis, MO, discharged the applicant from the USAR effective 4 October 1985, under the provisions of Army Regulation 135-178. His service was characterized as UOTHC.

13. In the processing of this case, a search of the Criminal Investigation Division database was requested for a Report of Investigation and/or Military Police Report pertaining to the applicant. The search revealed no harassment and racial harassment records pertaining to the applicant.

14. The authority granted by Title 10, U.S. Code, Section 1552 (Correction of Military or Naval Records) is not unlimited. The ABCMR has the authority to correct only Army records. The Board has no authority to correct records created by the Department of Defense, other branches of the Services, Department of Veterans Affairs, or any other governmental agency. ARNG discharges, as documented on the NGB Form 22, are functions of the State under the legal authority of Title 32 and are not Federal actions. As such, they are primarily under the control of the State Adjutant General. The ABCMR may only recommend possible actions.

15. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 3 June 1982 under other than honorable conditions discharge. He states in part:

"The extenuating reasons for my other than honorable discharge are as the following. Upon successful completion of my first part of my active service training. From Fort Still Oklahoma. This is when the racial harassment started. The environment was extremely hostile Hispanic individuals. They would create and use and infractions to hinder the performance of my duties.

When I was injured in an offsite accident the commander insisted that I perform duties that I was physically unable to do. Nor would the commander reassign me to desk duty until the injuries could be healed. The commander then discharged me without good cause knowing full well the ramifications there of."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His Report of Separation and Record of Service (NGB Form

22) shows the applicant entered the New Jersey Army National Guard (NJARNG) on 29 June 1979 and received an under other than honorable conditions discharge from the same on 3 June 1982 under provisions in paragraph section VII of chapter 7 of AR 135-178, Separation of Enlisted Personnel (15 August 1981) for Unsatisfactory Participation.

d. No medical documentation was submitted with the application and his period of service predates AHLTA.

e. The applicant received at least six notices of unsatisfactory performance for failing to attend drill weekends in 1981. One was hand delivered to his home and he signed for it.

f. On 13 December 1981, his company commander requested he be separated from the NJARNG for a "total of 13 AWOLS in one year." His request was approved by Commanding General of the 50th Armored division on 3 February 1982.

g. On 17 April, the applicant was informed of the initiation of action to separate him and he was given 45 days to take advantage of variety of actions to address his situation. There is no evidence he took advantage of any of the presented actions.

h. It is the opinion of the ARBA medical advisor that a discharge upgrade is unwarranted.

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 misconduct leading to the applicant's separation, and 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:

Mbr 1 Mbr 2 Mbr 3

:	:	:	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.

//SIGNED//

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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. Title 10, U.S. Code, Section 1556, 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 135-91 (Army National Guard and Army Reserve – Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures) defines ARNG and USAR service obligations and prescribes policies and procedures governing methods of fulfillment, satisfactory participation and enforcement. Paragraph 4-12d(2) states that enlisted members declared unsatisfactory participants would be considered for separation UOTHC.

4. Army Regulation 135-178 (Army National Guard and Army Reserve – Enlisted Administrative Separations) sets forth the basic authority for the separation of enlisted Reserve Component personnel.

a. An honorable characterization of service 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.

b. A general (under honorable conditions) characterization of service is warranted when significant negative aspects of the Soldier's conduct or performance of duty outweigh positive aspects of the Soldier's military record.

5. The Secretary of Defense directed the Service Discharge Review Boards (DRB) and Service Boards for Correction of Military/Naval Records (BCM/NR), on 3 September 2014, 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.

6. 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.

7. 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.

//NOTHING FOLLOWS//