

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 18 February 2025

DOCKET NUMBER: AR20240007032

APPLICANT REQUESTS: upgrade of his under other than honorable conditions (UOTHC) discharge to honorable. Additionally, he requests a personal appearance before the Board.

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

DD Form 149 (Application for Correction of Military Record)

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 correction is warranted because he had an arteriovenous malformation (AVM) in his brain that caused blackouts and seizures. Those illnesses contributed to his bad judgement. He drank to ease the pain. He had surgery to remove the AVM and has been on medication since.
3. On 18 June 1974, the applicant enlisted in the Regular Army, for 3 years. The highest grade he attained was E-3.
4. On 7 February 1975, the applicant accepted nonjudicial punishment (NJP) under Article 15 of the Uniform Code of Military Justice (UCMJ), for failing to go at the time prescribed to his appointed place of duty at the time prescribed, on or about 21 January 1975. His punishment included reduction to E-1, forfeiture of \$75.00 per month for one month, and 14 days extra duty and restriction.
5. On 26 June 1975, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty at the time prescribed, on or about 15 June 1975. His punishment included reduction to E-2, forfeiture of \$80.00 for one month, and 14 days extra duty and restriction.

6. On 21 November 1975, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty at the time prescribed, on or about 13 November 1975. His punishment included reduction to E-2, forfeiture of \$75.00 for one month, and 14 days extra duty and restriction.
7. On 8 January 1976, the applicant accepted NJP under Article 15 of the UCMJ, for disobeying a lawful command from his superior commissioned officer, on or about 6 December 1975. His punishment included forfeiture of \$50.00.
8. On 30 January 1976, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty at the time prescribed, on or about 23 January 1976. His punishment included forfeiture of \$93.00, and 14 days extra duty and restriction.
9. On 5 February 1976, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military control on 9 February 1976.
10. On 17 February 1976, the applicant accepted NJP under Article 15 of the UCMJ, for failing to go at the time prescribed to his appointed place of duty at the time prescribed, on or about 29 January 1976; and absenting himself from his place of duty, on or about 5 February 1976. His punishment included reduction to E-1, forfeiture of \$180.00 a month for a period of two months, and 45 days extra duty and restriction.
11. On 26 February 1976, the applicant was reported as AWOL a second time, and remained absent until he returned to military control on 1 March 1976.
12. On 2 March 1976, the applicant was reported as AWOL a third time, and remained absent until he returned to military control on 20 April 1976.
13. Court-martial charges were preferred against the applicant on 30 April 1976, for violations of the UCMJ. His DD Form 458 (Charge Sheet) shows he was charged with three specifications of going AWOL.
14. The applicant consulted with legal counsel on 1 May 1976, and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of an undesirable discharge; and the procedures and rights that were available to him.
 - a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged he understood that if his request for discharge was accepted, he may be discharged UOTHC. He understood that, as a result of the

issuance of such a discharge, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State law.

- b. The available record is void of a statement in his own behalf.
- 15. On 5 May 1976, the applicant's commander recommended approval of the applicant's request for discharge with issuance of an undesirable discharge certificate.
- 16. The separation authority approved the applicant's request for discharge on 14 May 1976, and directed issuance of a DD Form 258A (Undesirable Discharge Certificate).
- 17. The applicant was discharged on 19 May 1976. His DD Form 214 (Report of Separation from Active Duty) confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, for the good of the service. He was discharged in the lowest enlisted grade and his service was characterized as UOTHC. He was assigned Separation Program Designator code KFS and Reenlistment Code 4. He completed 1 year, 9 months, and 5 days of net active service this period with 57 days of lost time.
- 18. The applicant petitioned the Army Discharge Review Board for consideration of his request for upgrade of his UOTHC discharge. On 5 July 1979, the Board voted to deny relief and determined his discharge was both proper and equitable.
- 19. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.
- 20. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

21. 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 (EMR – AHLTA and/or MHS Genesis), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or 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 19 May 1976 under other than honorable conditions discharge. The applicant claims he had an arteriovenous malformation (AVM) in his brain which caused seizures and blackouts and thus led to his multiple UCMJ violations.
- c. The Record of Proceedings details the applicant's military service and the circumstances of the case. His DD 214 shows he entered the regular Army on 18 June 1974 and was discharged under other than honorable conditions on 19 May 1976 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel (1 December 1975): Discharge for the Good of the Service – Conduct Triable by Court Martial.
- d. The supporting documentation contains five Article 15's for failure to repair and one for willfully obeying a direct order,
- e. A 27 April 1976 Charge Sheet (DD Form 458) shows the applicant was charged with three periods of absence without leave.
- f. On 1 May 1976, the applicant voluntarily requested discharge for the good of the Service under the provisions of Chapter 10, AR 635-200.
- g. The Commanding General of the 9th Infantry Division and Fort Lewis approved his request on 14 May 1976 with the directive he receive and Undesirable Discharge certificate.
- h. No medical documentation was submitted with the application and his period of service predates the EMR. JLV shows the applicant is not registered with the VA.
- i. It is the opinion of the ARBA medial advisor that a discharge upgrade based on a medical condition is not warranted.
- j. Kurta Questions:
 - (1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO
 - (2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

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 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 charged with an offense punishable under the Uniform Code of Military Justice with a punitive discharge. After being charged, he consulted with counsel and voluntarily requested discharge in lieu of trial by court-martial. The Board found no error or injustice in the separation proceedings and designated characterization of service. The Board noted the applicant's misconduct and concurred with the medical advisor's review finding an upgrade based on a medical condition is not warranted and the applicant did not have a condition or experience that mitigated his misconduct. Based on a preponderance of the evidence, the Board concluded that the characterization of service the applicant received upon separation was not in error or unjust.

2. 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.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

: : : GRANT FULL RELIEF

: : : GRANT PARTIAL RELIEF

: : : GRANT FORMAL HEARING

:XX :XX :XX 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. 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 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR.
 - a. Paragraph 2-9 states the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.
 - b. The ABCMR may, in its discretion, hold a hearing or request additional evidence or opinions. Additionally, it states in paragraph 2-11 that applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.
4. Army Regulation 635-200 (Personnel Separations – Enlisted Personnel) sets forth the basic authority for the 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 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

5. 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 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.

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//