

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 14 March 2025

DOCKET NUMBER: AR20240007666

APPLICANT REQUESTS: an upgrade of his characterization of service from under conditions other than honorable to under honorable conditions (General).

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:
DD Form 149 (Application for Correction of Military Record), 16 February 1968

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 suffered from his younger brother's death prior to be drafted into the Army. He was present when his brother was killed, and he should have been allowed the time to mourn his death. He is currently suffering from mental health issues and is trying to get help from the Department of Veteran Affairs.
3. A review of the applicant's service record shows:
 - a. He was inducted in the Army of the United States on 30 April 1968
 - b. On 5 March 1969, the applicant accepted nonjudicial punishment (NJP) under the provisions of Article 15, Uniform Code of Military Justice (UCMJ), for, on or about 31 January 1969, he did, without authority absent himself from his place of duty and did remain so absent until on or about 3 February 1969. His punishment included 10 days confinement and ten 10 days hard labor effective 7 March 1969.
 - c. Headquarters, Special Troops, Summary Court-Martial Order Number 572, 19 June 1969, shows the applicant was found guilty of two specifications of violation of Article 86 (Absent Without Leave), UCMJ:

(1) Specification 1: In that he did, on or about 1 April 1969, without proper authority absent himself from his unit and did remain so absent until on or about 22 May 1969

(2) Specification 2: In that he did on or about 24 May 1969, without proper authority absent himself from his unit and did remain so absent until on or about 9 June 1969.

(3) His sentence, adjudged on 17 June 1969, included reduction forfeiture of \$73.00 per month for one month and to be reduced to the rank/grade of private (PVT)/E-1.

(4) On 12 February 1969, the sentence was approved and ordered executed.

d. Headquarters, Special Troops, Summary Court-Martial Order Number 1118, 28 October 1969, shows the applicant was found guilty of violation of Article 86, UCMJ. Specification: In that he did on or about 6 July 1969, without authority absent himself from his unit and did remain so absent until on or about 17 September 1969. His sentence, adjudged on 27 October 1969, included forfeiture of \$35.00 per month for one month. On 28 October 1969, the sentence was approved and ordered executed.

e. Headquarters, Special Troops, Summary Court-Martial Order Number 409, 20 March 1970, shows the applicant was found guilty of violation of Article 86, UCMJ. Specification: In that he did on or about 13 November 1969, without authority absent himself from his unit and did remain so absent until on or about 27 January 1970. His sentence, adjudged on 11 March 1970, included forfeiture of \$70.00 per month for one month. On 20 March 1970, the sentence was approved and ordered executed.

f. Headquarters, U.S. Army Training Center, Infantry and Fort Dix, Special Court-Martial Order Number 10, 13 January 1972, shows the applicant was found guilty of violation of Article 86, UCMJ. Specification: In that he did on or about 14 March 1970, without authority absent himself from his unit and did remain so absent until on or about 27 September 1971. His sentence, adjudged on 17 December 1971, included to be discharged from the service with a bad conduct discharge, to be confined at hard labor for 5 months, forfeiture of \$110.00 per month for five months, and to be reduced to the lowest enlisted grade. On 13 January 1972, the sentence was approved and ordered executed. The record of trial was forwarded for review by the U.S. Army Court of Military Review.

g. On 26 January 1972, the U.S. Army Court of Military Review affirmed the findings of guilty and sentence as approved.

h. Headquarters, U.S. Army Training Center, Infantry and Fort Dix, Special Court-Martial Order Number 42, 4 February 1972, ordered the sentence, adjudged on 17 December 1971, as promulgated in Special Court-Martial Order Number 19, to be duly executed.

i. The applicant was discharged from active duty on 16 February 1972. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he was discharged under the provisions of Army Regulation (AR) 635-200 (Personnel Separations - Enlisted Personnel), in the rank/grade of PV1/E-1, and his service was characterized as under conditions other than honorable. He completed 1 year, 4 months, and 15 days of net active service with lost time from 1 April 1969 to 21 May 1969, 24 May 1969 to 16 September 1969, 27 January 1969 to 10 March 1970, and from 14 March 1970 to 13 February 1972. He was assigned the separation program number of 292 and the RE code of 4. Item 13 (Decorations, Medals, Badges, Citations and Campaign Ribbons Awarded or Authorized) shows he was awarded the following:

- National Defense Service Medal
- Marksmanship Qualification Badge with Rifle Bar (M-14)

j. On 20 September 1973 the Army Discharge Review Board notified the applicant they had determined he was properly discharged and his request for a change in the type and nature of his discharge had been denied.

4. AR 635-200, in effect at that time, set forth the basic authority for separation of enlisted personnel with a dishonorable discharge or bad conduct discharge. This regulation states that an enlisted person will receive a bad conduct discharge pursuant only to an approved sentence of a general court-martial imposing a dishonorable discharge.

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

6. MEDICAL REVIEW:

a. The applicant is applying to the ABCMR requesting an upgrade of his under other than honorable conditions (UOTHC) characterization of service to under honorable (general). On his DD Form 149, the applicant indicated Other Mental Health Issues are related to his request. More specifically, the applicant indicated that he never recovered from the death of his younger brother, which occurred prior to the applicant's time in the military. He further stated that he was present when his brother was killed and should have been allowed time to mourn. 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 was inducted into the Regular Army (RA) on 30 April 1968, 2)

on 05 March 1969, he received an Article 15 for absenting himself from his place of duty from on or about 31 January 1969 to on or about 03 February 1969, 3) Court-Martial Orders dated 19 June 1969 show the applicant was found guilty of two specifications of Article 86 (Absent Without Leave) from on or about 01 April 1969 to on or about 22 May 1969, and from on or about 24 May 1969 to on or about 09 June 1969, 4) Court-Martial Orders dated 28 October 1969 show the applicant was found guilty of absenting himself from his unit from 06 July 1969 to 27 October 1969, 5) Court-martial Orders dated 13 January 1972 show the applicant was found guilty of Article 86, absenting himself from his unit from on or about 14 March 1970 to on or about 27 September 1971), 6) the applicant was discharged from active duty on 16 February 1972 under the provisions of AR 635-200, with a Separation Program Number (SPN) of 292, 7) On 20 September 1973, the ADRB denied the applicant's request for a change in the type and nature of his discharge.

b. The Army Review Board Agency (ARBA) Medical Advisor reviewed the ROP and casefiles, supporting documents and the applicant's military service records. There were no medical records available for review. 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. The applicant's DD Form 47 (Record of Induction) shows his PULHES as 111111, indicative that there were no BH issues identified at the time of his induction into the military. There were no in-service medical records available for review.

d. There was no applicant information registered in JLV.

e. 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.

f. 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 medical documentation pertaining to 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:

After thorough review of the application, supporting documents, and the applicant's military record, the Board determined that relief was not warranted in this case. The Board carefully considered the applicant's request for an upgrade of his discharge characterization from "under conditions other than honorable" to "under honorable conditions (General)" and conducted a comprehensive review in accordance with published Department of Defense guidelines for liberal consideration of discharge upgrade requests.

a. In concurrence with the medical advisor's findings, the Board acknowledges the applicant's assertion that his misconduct was related to mental health issues stemming from the traumatic loss of his younger brother prior to his military service. Although the applicant's claims are noted, the absence of medical documentation during his time in service or after his discharge, and the lack of corroborating evidence, led the Board to conclude that his misconduct was not sufficiently mitigated by mental health conditions or other medical factors.

b. The applicant's record shows a consistent pattern of misconduct, including multiple instances of absence without leave (AWOL), leading to disciplinary actions and a court-martial. These violations, which spanned several years of his military service, significantly impacted the Board's decision to deny relief.

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. Army Regulation 635-200 (Personnel Separation), the regulation currently in effect, sets forth the basic authority for the separation of enlisted personnel.

a. Paragraph 3-7a states that 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. Paragraph 3-7b states that 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. 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. 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.

4. Court-martial convictions stand as adjudged or modified by appeal through the judicial process. In accordance with Title 10, USC, Section 1552, the authority under which this Board acts, the ABCMR is not empowered to set aside a conviction. Rather, it is only empowered to change the severity of the sentence imposed in the court-martial process and then only if clemency is determined to be appropriate. Clemency is an act of mercy or instance of leniency to moderate the severity of the punishment imposed.

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.

//NOTHING FOLLOWS//