

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 6 March 2025

DOCKET NUMBER: AR20240007715

APPLICANT REQUESTS: an upgrade of his under other than honorable conditions discharge to honorable.

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

- DD Form 149 (Application for Correction of Military Record)
- Medical Record from Nulton Diagnostic & Treatment Center

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 believes his character of service was honorable. Please change his character of service to honorable.
3. The applicant provides his medical records from 24 March 2022 to 20 September 2024 that shows primary diagnosis as anxiety disorder.
4. A review of the applicant's service record shows:
 - a. He enlisted in the Regular Army on 9 January 1978.
 - b. His DA Form 2-1 (Personnel Qualification Record) shows the applicant was absent without leave (AWOL) from the following:
 - 11 June 1981 until 14 June 1981
 - 4 October 1982 until 13 October 1982
 - 22 October 1982 until 2 December 1982

c. On 29 October 1980, he accepted nonjudicial punishment for fail to go at the time prescribed to the appointed place of duty.

d. On 10 September 1982, he accepted nonjudicial punishment for breaking restriction and damage to government quarters. His punishment included reduction to private (PV2)/E-2 14 days restriction and extra duties.

e. On 7 December 1982, court-martial charges were preferred on the applicant for being AWOL from 22 October 1982 until 3 December 1982.

f. On 8 December 1982, after consulting with legal counsel he requested a discharge for the good of the service under the provisions of chapter 10, Army Regulation (AR) 635-200 (Personnel Separations – Enlisted Personnel). He acknowledged:

- maximum punishment
- he was guilty of the charges against him or of a lesser included offense
- he does not desire further rehabilitation or further military service
- if his request for discharge was accepted, he may be discharged under other than honorable conditions and furnished an Under Other Than Honorable Conditions Discharge Certificate
- he would be deprived of many or all Army benefits, he may be ineligible for many or all benefits administered by the Veterans Administration,
- he may be deprived of his rights and benefits as a veteran under both Federal and State law
- he may expect to encounter substantial prejudice in civilian life

g. On 17 December 1982, consistent with the chain of command recommendations, the separation approval authority approved the applicant's request for discharge in lieu of trial by courts-martial. He would be issued an Under Other Than Honorable Conditions Discharge Certificate and reduced to the lowest enlisted pay grade.

h. On 14 January 1983, he was discharged from active duty with an under other than honorable conditions characterization of service. His DD Form 214 shows he completed 4 years, 10 months, and 11 days of active service with 55 days of lost time. He was assigned separation code JFS and the narrative reason for separation listed as "For the Good of the Service-In Lieu of Trial by Court-Martial," with reentry code 3. It also shows he was awarded or authorized:

- Sharpshooter Marksmanship Qualification Badge with Rifle Bar
- Army Service Ribbon
- Parachute Qualification Badge

5. The applicant documented other mental health issues/conditions related to his request. The available service record is void mental health medical documentation regarding his request.

6. Based on the applicant's condition the Army Review Board Agency medical staff provided a medical review for the Board members. See "MEDICAL REVIEW" section.

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

8. By regulation, 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.

9. MEDICAL REVIEW:

a. Background: The applicant is requesting an upgrade of his under other than honorable conditions discharge to honorable. He contends OMH as related to his request.

b. 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:

- Applicant enlisted in the Regular Army on 9 January 1978.
- DA Form 2-1 (Personnel Qualification Record) shows the applicant was absent without leave (AWOL) on the following:
 - 11 June 1981 until 14 June 1981
 - 4 October 1982 until 13 October 1982
 - 22 October 1982 until 2 December 1982
- On 29 October 1980, he accepted nonjudicial punishment for failure to go at the time prescribed to the appointed place of duty.
- On 10 September 1982, he accepted nonjudicial punishment for breaking restriction and damage to government quarters.
- On 7 December 1982, court-martial charges were preferred on the applicant for being AWOL from 22 October 1982 until 3 December 1982.
- Applicant was discharged on 14 January 1983, under the provisions of Army Regulation (AR) 635-200, Chapter 10, in lieu of trial by court-martial, with characterization of service as under other than honorable conditions, separation code JFS, and reentry code 3. He completed 4 years, 10 months, and 11 days of active service with 55 days of lost time.

c. Review of Available Records: The Army Review Board Agency's (ARBA) Behavioral Health Advisor reviewed the supporting documents contained in the applicant's file. The applicant states, he believes his character of service was honorable and requests a change in his character of service to honorable.

d. Due to the period of service, no active-duty electronic medical records were available for review. No hardcopy medical documentation was submitted for review related to the applicant's time in service.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected and has not been treated by the VA for any behavioral health condition. The applicant submitted post-military service medical documentation showing on 24 March 2022 the applicant participated in an intake session for the purpose of obtaining psychiatric care and medication management. He reported one prior hospitalization due to anxiety and depression and denied any history of trauma. On 16 April 2022, the applicant participated in a psychiatric evaluation that states he was hospitalized a month prior due to depression, olfactory and visual hallucinations, and suicidal ideation. The evaluation documents an extensive and long-standing history of substance abuse including: opioids like Percocet, heroin, cocaine, LSD, hash, marijuana and alcohol. The applicant had a history of two DUI's that resulted in nine months of incarceration and had participated in four rehabilitation programs. The diagnostic impression was of possible Schizoaffective Disorder, unspecified (Rule Out) due to extensive substance use. He was diagnosed with Alcohol Dependence, Opioid Dependence, Cocaine Abuse, and Cannabis Use.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses and the VA has not service-connected the applicant for

any BH condition. The available medical documentation provided by the applicant indicates he has an extensive and longstanding substance abuse history that appears to have contributed to his current mental health condition. However, the evaluating psychiatrist did not diagnose him with Schizoaffective Disorder but indicated it as a condition to be considered or ruled out based on his presentation. The applicant was diagnosed with Alcohol Dependence, Opioid Dependence, Cocaine Abuse, and Cannabis Use. Per Liberal Consideration guidelines, substance abuse in the absence of a diagnosed mental health condition would not provide mitigation.

h. Per Liberal Consideration guidelines, his assertion of OMH on his application is sufficient to warrant consideration by the Board.

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. Upon review of the applicant's petition, available military records and the medical review, the Board concurred with the advising opinion of the Agency Behavioral Health Advisor that there is insufficient evidence to support the applicant had a behavioral health condition during military service that mitigates his discharge. The Board acknowledged the applicant's current medical condition, there is no evidence in the available service record that such a condition was identified or documented during his period of active duty.

2. The Board determined there is insufficient evidence of in-service mitigating factors to overcome the multiple instances of misconduct, including repeated periods of absence without leave (AWOL), nonjudicial punishments for failure to report to duty, breaking restriction, and damaging government property. The Board noted, the applicant provided no post service achievements or character letters of support for the Board to weigh a clemency determination. The Board found the characterization of service accurately reflects the nature and severity of the applicant's misconduct and the circumstances surrounding his separation. Therefore, the request for relief is denied.

3. Consideration was given to the Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant selected OMH as related to his request.

(2) Did the condition exist or experience occur during military service? No. There is no medical documentation indicating the applicant was diagnosed with any BH condition during military service.

(3) Does the condition or experience actually excuse or mitigate the discharge? No. There is insufficient evidence of any mitigating BH condition. There is no evidence of any in-service BH diagnoses and the VA has not service-connected the applicant for any BH condition. The available medical documentation provided by the applicant indicates he has an extensive and longstanding substance abuse history that appears to have contributed to his current mental health condition. However, the evaluating psychiatrist did not diagnose him with Schizoaffective Disorder but indicated it as a condition to be considered or ruled out based on his presentation. The applicant was diagnosed with Alcohol Dependence, Opioid Dependence, Cocaine Abuse, and Cannabis Use. Per Liberal Consideration guidelines, substance abuse in the absence of a diagnosed mental health condition would not provide mitigation.

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 635-200 (Personnel Separations – Enlisted Personnel), in effect at the time, sets forth the basic authority for the separation of enlisted personnel.
 - a. Paragraph 3-7a (Honorable Discharge) states 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. Paragraph 3-7b (General Discharge) states 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.

3. 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.

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. 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//