

IN THE CASE OF: [REDACTED]

BOARD DATE: 24 January 2025

DOCKET NUMBER: AR20240007851

APPLICANT REQUESTS: reconsideration of his previous request for an upgrade of his under other than honorable conditions discharge.

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

- DD Form 149 (Application for Correction of Military Record)
- Certificate of Marriage

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20230004605 on 1 December 2023.

2. The applicant states he was not aware that he needed help with depression and as a result, he became an alcoholic and lost control of his work performance. He was not offered help for rehabilitation. He recently called the Department of Veterans Affairs crisis line and was kept for a day and two nights and is now under the care of a doctor. He only intended to serve his country in honor. He annotated other mental health as a condition/issue related to his request.

3. A review of the applicant's service record shows:

a. He served honorably from 7 December 1971 to 29 April 1972. His DD Form 214 (Armed Forces of the United States Report of Transfer or Discharge) shows he completed 4 months and 23 days of active service and was awarded or authorized the Marksman Marksmanship Qualification Badge with Rifle Bar (M-16).

b. He re-enlisted in the Regular Army on 27 July 1973.

c. He accepted nonjudicial punishment under the provisions of the Uniform Code of Military Justice (UCMJ) on/for:

- 11 April 1974 for absenting himself from his place of duty from 0630 hours on 7 April 1974 to 0800 hours on 7 April 1974 and from 0430 hours on 8 April 1974 to 0630 hours on 8 April 1974; his punishment included reduction to private (PVT)/E-1 (suspended for 30 days)
- 9 April 1974 for absenting himself from his place of duty from 1130 hours on 1 July 1974; his punishment included reduction to PVT/E-1 (suspended)
- 6 August 1974 for failing to obey a lawful order to get a haircut on 29 July 1974

d. On 18 September 1974, the applicant was convicted by Special Court-Martial Order Number 12 of:

- Specification, Charge I: having received a lawful command from his superior commissioned officer to put the bottle down, did, at Fort Sill, Oklahoma, on or about 1845 hours, 30 September 1974, willfully disobey the same
- Specification 1, Charge II: having received a lawful order from his superior noncommissioned officer to put the bottle down, did, at Fort Sill, Oklahoma on or about 1900 hours, 30 September 1974, willfully disobey the same
- Specification 2, Charge II: on or about 1845 hours, 30 September 1974, was disrespectful in language toward his superior noncommissioned officer, who was then in the execution of his office, by saying to him, "You Bastard, Son-of-a-B----, Motherf----," or words to that effect.

His sentence consisted of confinement at hard labor for 3 months

e. On 4 December 1974, the applicant underwent a mental status evaluation wherein his evaluation was annotated as:

- Behavior: Normal
- Level of Alertness: Fully Alert
- Level of Orientation: Fully Oriented
- Mood: Level
- Thinking Process: Clear
- Thought Content: Normal
- Memory: Good
- No significant mental illness
- Mentally responsible
- Able to distinguish right from wrong
- Able to adhere to the right

- Has the mental capacity to understand and participate in board proceedings
- Meets the retention standards prescribed in Chapter 3 of Army Regulation 40-501 (Standards of Medical Fitness)

f. On 3 January 1975, his immediate commander initiated action for the applicant to be discharged under the provisions of Chapter 13, paragraph 5 of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel).

(1) Conduct and efficiency are unsatisfactory.

(2) Recommend the applicant be discharge from the service as unfit because of frequent incidents of a discreditable nature. Discharge for unsuitability is not deemed appropriate because his behavior is not due to an inability to satisfactorily perform within the meaning of unsuitability. His records reflect that his highest rank has been PVT/E-2, he has one court-martial and three punishments under Article 15 of the UCMJ. He was sent to the brigade for the purpose of receiving correctional training and treatment necessary to return him to duty as a well-trained Soldier with improved attitude and motivation. However, his actions since arrival preclude accomplishment of the objective as evidenced by his resume of behavior, attitude, and ability.

(3) He has demonstrated little desire for returning to duty. He has receiving counseling by members of the leadership team and members of the professional staff agencies. In the commander's opinion, the applicant possesses the mental and physical ability necessary to be an effective Soldier, but his present record and his failure to react constructively to the rehabilitation program are indicative that he should not be retained in service.

(4) He has received considerable counseling since his arrival by the social workers, leadership team and unit cadre. He has not responded favorably to the counseling nor from duties given him. He does not meet the criteria for further rehabilitation attempts.

g. Also on 3 January 1975, the applicant consulted with legal counsel. He was advised of the basis for the contemplated action to accomplish his separation for unfitness under the provisions of Chapter 13, Army Regulation 635-200 and its effects; of the rights available to him; and the effect of any action taken by him in waiving his rights.

- he waived consideration of his case by a board of officers
- he waived a personal appearance before a board of officers
- statements in his own behalf are not submitted herewith
- he understood he may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions was issued to him

- he further understood that as a result of an undesirable discharge under conditions other than honorable, he may be ineligible for many or all benefits as a veteran under both Federal and state laws

h. On 6 January 1975, consistent with the chain of command recommendations, the discharge of the applicant under the provisions of Chapter 13, Army Regulation 635-200 was directed by the separation approval authority. He would be furnished an Undesirable Discharge Certificate.

i. On 8 January 1975, he was discharged accordingly. His DD Form 214 (Report of Separation from Active Duty) shows he completed 1 year, 1 month, and 26 days of active service. It also shows in:

- item 9c (Authority and Reason): paragraph 13-5a(1), Army Regulation 635-200, separation program designator (SPD) JLB
- item 9e (Character of Service): under other than honorable conditions
- item 9f (Type of Certificate Issued): DD Form 258A (Undesirable Discharge Certificate)
- item 10 (Reenlistment Code): RE-3
- item 26 (Decorations, Medals, Badges, Commendations, Citations and Campaign Ribbons Awarded or Authorized): National Defense Service Medal

4. The applicant petitioned the Army Discharge Review Board (ADRB) for a discharge upgrade. On 30 July 1991, the ADRB notified the applicant, after careful consideration of his military records and all other available evidence, the ADRB determined he was properly discharged and denied his request.

5. The applicant petitioned the ABCMR for a discharge upgrade. On 1 December 2023, the ABCMR determined relief was not warranted and denied his request.

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

7. By regulation, action will be taken to separate an individual for unfitness when it is clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort is unlikely to succeed.

8. MEDICAL REVIEW:

a. Background: The applicant is requesting reconsideration of his previous request for an upgrade of his under other than honorable conditions discharge. 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:

- The applicant enlisted in the ARNG in October 1971 and entered initial active duty for training on 7 December 1971. He served honorably from 7 December 1971 to 29 April 1972.
- He enlisted in the Regular Army on 27 July 1973.
- He accepted nonjudicial punishment under the provisions of the Uniform Code of Military Justice (UCMJ) on/for:
- 11 April 1974 for absenting himself from his place of duty from 0630 hours on 7 April 1974 to 0800 hours on 7 April 1974 and from 0430 hours on 8 April 1974 to 0630 hours on 8 April 1974
- 9 July 1974 for absenting himself from his place of duty from 1130 hours on 1 July 1974
- 6 August 1974 for failing to obey a lawful order to get a haircut on 29 July 1974
- On 18 September 1974, the applicant was convicted by Special Court-Martial Order Number 12 of:
- Charge I: having received a lawful command from his superior commissioned officer to put the bottle down, did, at Fort Sill, Oklahoma, on or about 1845 hours, 30 September 1974, willfully disobey the same
- Charge II, Specification 1: having received a lawful order from his superior noncommissioned officer to put the bottle down, did, at Fort Sill, Oklahoma on or about 1900 hours, 30 September 1974, willfully disobey the same
- Charge II, Specification 2: on or about 1845 hours, 30 September 1974, was disrespectful in language toward his superior noncommissioned officer, who was then in the execution of his office, by saying to him, "You Bastard, Son-of-a-B----, Motherf----," or words to that effect.
- The applicant was discharged on 8 January 1975 under the provisions of Army Regulation 635-200, Chapter 13. His DD Form 214 for this period reflects his service was characterized as under other than honorable conditions, with Separation Program Designator JLB, and reenlistment code 3.
- The applicant petitioned the Army Discharge Review Board (ADRB) for a discharge upgrade. On 30 July 1991, the ADRB notified the applicant, after careful consideration of his military records and all other available evidence, the ADRB determined he was properly discharged and denied his request.
- The applicant petitioned the ABCMR for a discharge upgrade. On 1 December 2023, the ABCMR determined relief was not warranted and denied his request.

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 was not aware that he needed help with depression and as a result, he became an alcoholic and lost control of his work performance. He was not offered help for rehabilitation. He recently called the

Department of Veterans Affairs crisis line and was kept for a day and two nights and is now under the care of a doctor. He only intended to serve his country in honor.

d. Due to the period of service, no active-duty electronic medical records were available for review. A hardcopy mental status evaluation for the purpose of separation, dated 24 December 1974, shows the applicant did not have any significant mental illness, he was considered mentally responsible and able to distinguish between right from wrong, and he met the medical standards for retention. The applicant was cleared for any administrative action deemed appropriate by Command.

e. The VA's Joint Legacy Viewer (JLV) was reviewed and indicates the applicant is not service connected. The applicant contacted the Veteran's Crisis Line on 16 October 2023, and reported being in distress due to being a victim of identity theft and unable to access VA benefits. He was referred to the emergency room since he reported suicidal ideation and a suicidal gesture the previous week. The applicant was psychiatrically hospitalized and, upon assessment, reported he was depressed regarding his lack of VA benefits and reported needing assistance with his VA claim appeal. The applicant was started on antidepressant medication and discharged on 18 October 2023. He was provided with a post-hospitalization follow-up mental health session on 24 October 2023, to assess his mental status and provide continuity of care following discharge from inpatient treatment. The applicant reported being stable and had improved mood on his medication regimen. He was provided with three additional follow-up sessions. During his follow-up session on 07 November 2023, he denied any significant stressors, reported adherence to his medication, and evidenced mood stability with no noted distress. He had not contacted the VSO regarding seeking support with upgrading his benefits claim, which was the issue that had caused his distress and suicidal ideation. The applicant was offered community referrals for psychiatry and mental health counseling, but he declined. A follow-up session on 14 November 2023, shows the applicant was stable and evidenced no concerns, he had received a refill of his antidepressant medication from his primary care provider and care was transferred to his community provider since he was not eligible for ongoing VA care. During a follow-up on 8 December 2023, he continued to remain compliant with his prescribed psychiatric medication and remained stable with no mental health concerns.

f. Based on the information available, it is the opinion of the Agency Behavioral Health Advisor that there is insufficient evidence the applicant had a behavioral health condition that would mitigate his misconduct.

g. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the mitigating condition of OMH.

(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. Although the applicant selected OMH as related to his request, 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 VA electronic record indicates the applicant was briefly psychiatrically hospitalized for one day due to suicidal ideation based on his distress of reportedly having been the victim of identity theft and his ineligibility for VA benefits. The record shows the applicant rapidly stabilized when provided with antidepressant medication and supportive services. The applicant provided no medical documentation of ongoing behavioral health treatment or diagnosis prior to this incident, where he experienced transient distress that rapidly stabilized related to a current stressor.

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

BOARD DISCUSSION:

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 conduct and the reason for separation. The applicant was separated for unsuitability. The Board found no error or injustice in the separation proceedings under the regulation and subsequent characterization of service assigned at separation. Based upon the conduct leading to the applicant's separation and the following recommendation found in the medical review related to the liberal consideration:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? Yes. The applicant asserts the mitigating condition of OMH.

(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. Although the applicant selected OMH as related to his request, 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 VA electronic record indicates the applicant was briefly psychiatrically hospitalized for one day due to suicidal ideation based on his distress of reportedly having been the victim of identity theft and his ineligibility for VA benefits. The record shows the applicant rapidly stabilized when provided with antidepressant medication and supportive services. The applicant provided no medical documentation of ongoing behavioral health treatment or diagnosis prior to this incident, where he experienced transient distress that rapidly stabilized related to a current stressor.

The Board determined relief was not warranted.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	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 amendment of the ABCMR decisions rendered in Docket Number AR20230004605 on 1 December 2023.

5/5/2025

X

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. 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. Issuance of an honorable discharge will be conditioned upon proper military behavior and proficient performance of duty during the member's current enlistment of current period of service with due consideration for the member's age, length of service, grade, and general aptitude.

b. A general discharge is a separation from the Army under honorable conditions of an individual whose military record is not sufficiently meritorious to warrant an honorable discharge.

c. An undesirable discharge is an administrative separation from the service under conditions other than honorable. It may be issued for unfitness.

d. Chapter 13 of the regulation states action will be taken to separate an individual for unfitness when it is clearly established that despite attempts to rehabilitate or develop him as a satisfactory Soldier, further effort is unlikely to succeed.

2. 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.

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.

//NOTHING FOLLOWS//